Supreme Court, U. S.
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APPENDIX

Volume I

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-627

DAYTON BOARD OF EDUCATION,
WILLIAM E. GOODWIN,
JOSEPHINE GROFF and
JAMES D. HART,

Petitioners,

v.

MARK BRINKMAN,
PATTY BRINKMAN, and
PHILLIP BRINKMAN,
By Their Mother and Next Friend,
Donna Brinkman, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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Petition For Certiorari Filed October 13, 1978
Certiorari Granted January 8, 1979

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I. RELEVANT DOCKET ENTRIES

4-17-72	Complaint filed in District Court.
7-14-72	Plaintiffs file application in District Court for hearing on the request for preliminary injunction for 1972-73 school year.
7-24-72	Answer of Defendants Dayton Board, James D. Hart, William E. Goodwin and Josephine Groff filed in District Court.
11-13-72 to 12-1-72	District Court holds hearing on violation issues as framed by the District Court.
2-7-73	District Court issues its Findings of Fact and Memorandum Opinion of Law.
3-30-73	Plans of Dayton Board, minority members of Dayton Board and Superintendent filed with District Court.
4-24-73	Plaintiffs file in District Court objections to the plan proposed by the Board majority.
7-13-73	District Court issues its supplemental order on remedy.
7-23-73	Plaintiffs file notice of appeal with District Court.
8-13-73	Defendants Dayton Board, et al., file notice of appeal with District Court.
8-20-74	Court of Appeals issues opinion affirming District Court's holding of a cumulative violation and remands for formulation of an adequate desegregation plan.
1-7-75	District Court issues order requiring submission of plans.
2-3-75	Plan of Dayton Board filed with District Court.
2-3-75	Alternative plan of plaintiffs filed with District Court.

2-17-75 to 2-20-75	District Court holds hearings on plans submitted.
3-10-75	District Court issues order on remedy.
3-18-75	Plaintiffs file notice of appeal with District Court.
6-24-75	Court of Appeals issues opinion and remands action to District Court.
11-5-75	District Court Order requiring Dayton Board to submit plan on or before 12-1-75 and appointing Dr. John A. Finger as consultant.
11-18-75	Order of District Court relating to establishment of guidelines for plan.
12-2-75	Dayton Board submits desegregation plan to District Court for consideration.
12-8-75 to 12-9-75	District Court held hearing on plans submitted to Court.
12-29-75	District Court's order and judgment ordering redistribution of pupils and appointing Dr. John A. Finger, Jr. as Master.
1-2-76	District Court's supplemental order correcting factual issue in 12-29-75 order.
1-8-76	Motion filed with District Court by Dayton Board to alter or amend judgment.
3-15-76	Master files report with District Court and hearing set.
3-22-76 to 3-23-76	District Court held hearings on report of Master.
3-23-76	District Court's final order relating to desegregation plan.

3-25-76	Judgment entry of District Court embodying order of 3-23-76 filed.
4-15-76	Notice of appeal filed by Dayton Board with District Court.
4-15-76	Application of Dayton Board for stay.
4-19-76	Order of District Court denying stay.
5-11-76	Application of Dayton Board to District Court for modification of report of Master.
5-14-76	Order of District Court granting modification except as relates to eighth graders.
6-1-76	Motion of Dayton Board directed to Court of Appeals to stay judgment.
6-16-76	Order of Court of Appeals denying stay.
7-26-76	Order of Court of Appeals affirming District Court's judgment of March 25, 1976.
7-28-76	Motion of Dayton Board directed to Court of Appeals to stay judgment pending writ of certiorari.
8-16-76	Order of Court of Appeals denying motion for stay.
8-17-76	Application to Associate Justice of Supreme Court for stay.
8-19-76	Request for stay denied by Associate Justice; writ of certiorari filed with Supreme Court.
10-27-76	Request for certification and transmittal of record filed with District Court.
1-17-77	Petition for writ of certiorari granted by Supreme Court.
6-27-77	Decision of Supreme Court remanding for further proceedings.
8-25-77	Order of Court of Appeals remanding to District Court.

11-3-77 Hearings held by District Court

12-15-77 Order of District Court dismissing Complaint.

12-28-77 Plaintiffs file Notice of Appeal.

1-5-78 Order of District Court denying stay.

1-16-78 Order of Court of Appeals granting stay.

7-27-78 Court of Appeals issues opinion ordering reinstatement of system-wide desegregation plan.

8-21-78 Court of Appeals denies stay request of Dayton Board.

8-28-78 Justice Stewart denies stay request of Dayton Board.

8-30-78 Justice Rehnquist denies stay request of Dayton Board.

10-13-78 Petition for writ of certiorari filed with Supreme Court.

12-8-78 Request for certification and transmittal of record filed with District Court.

1-9-79 Petition for writ of certiorari granted by Supreme Court.

II. OPINIONS BELOW

The opinions are found in the Appendix to the Petition for Writ of Certiorari filed in October, 1978.

III. RELEVANT RULINGS AND MOTION.

A. RULING OF TRIAL COURT MADE AT OPENING OF HEARING ON VIOLATION HELD IN NOVEMBER AND DECEMBER OF 1972.

[R. I. 1-2, Vol. 1] THE COURT: Before we commence, gentlemen, I would like to make a statement for the record and then you may make your responses. This is a limited hearing on this case and it is intended to be a preliminary inquiry. I want you gentlemen to understand if it develops in this inquiry that later hearings are necessary, they will be held. At this time however, we are going to inquire only into the question that was discussed with counsel at the pretrial hearing. We are going to inquire of whether or not acts by the School Board of Dayton have created a segregated school system.

At this time, we are not going to inquire into the questions regarding the so-called State Defendants unless there is a showing that their activities in some fashion contributed to or were acts with the School Board of Dayton.

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B. MOTION OF DAYTON BOARD RELATING TO STANDING.

[R. I. 1717, Vol. 17] We would move further for a directed verdict on the ground that there has been a failure of proof that the Plaintiffs in this action are members of the class which they purportedly represent or that this action is properly maintable as a class action under Rule 23.

• • •

C. RULINGS OF TRIAL COURT MADE AT REMEDIAL HEARINGS IN DECEMBER OF 1975 AND MARCH OF 1976.

[R. III. 52-55] Q. On page 16 you make the statement about declining enrollment is common these days to schools throughout the nation. This is at the top of the page. Then you conclude that the figures just presented suggest, however, and I am not sure what you mean by however an inordinate drop in the white student population, some of which must be attributed to a continued move to the suburbs. That continued to move to the suburbs is not something that results from the desegregation order, is it?

That has been going on in Dayton for the last 20 years?

A. It was established today approximately 11,000 white youngsters and 900 black youngsters have left Dayton in the last five years.

Q. There has been a substantial out white migration in most urban centers; is that correct?

A. Yes.

Q. And that is without regard to desegregation; is that correct?

A. Yes, it has been going on. In some instances with desegregation and in some instances without.

Q. In the 20 major cities of this country, has there been any court orders bussing or pairing or clustering of schools that resulted in white out-migration in the last 20 years?

THE COURT: Mr. Lucas, assume it either way. Assume that a court order has decimated the schools, or assume it has had no effect. Of what significance is that? These are social problems that I don't really feel the Court should enter into. Whatever the effects of desegregation may be or whatever the effects of the court order, this isn't a matter of choice. We have passed the point in this case where these things are relevant.

MR. LUCAS: Your Honor, the only relevance that I possibly see, and I basically agree with the Court, is their reason

for not using pairing and clustering as I understood it was because it produces this type of phenomena, and then they cite some bogus statistics about Professor Coleman, which he since recounted, and other so-called authorities to support that proposition.

To the extent they are relying on it, I think it is significant to demonstrate the truth or falsity of the position.

THE COURT: I don't really think it is worth the time, Mr. Lucas. Would you proceed, please?

BY MR. LUCAS:

Q. In fact, Dr. Gordon, isn't that the reason why your team was told by the Board to reject the alternative of pairing and clustering?

THE COURT: I would suggest, Mr. Lucas, that you proceed to something elese. I am simply not interested in this.

MR. LUCAS: Your Honor, I think it is essential that we know why the desegregation has been rejected, whether it is a good reason or bad reason.

THE COURT: Mr. Lucas, it may well be that we see these hearings in different lights. I would ask that you proceed to another matter.

BY MR. LUCAS:

Q. Dr. Gordon, why did you reject pairing and clustering?

THE COURT: Mr. Lucas, I would ask you to proceed to another matter.

MR. LUCAS: Your Honor is instructing me I may not ask —

THE COURT: Mr. Lucas, you have been instructed. Would you proceed to another matter?

MR. LUCAS: I just wanted the record to be clear.

THE COURT: I am sure the record is abundantly clear, and, Mr. Lucas, if I must tell you a third time, I will do so. Proceed to another matter.

MR. LUCAS: May I make an offer of proof?

THE COURT: You may at a recess.

MR. LUCAS: I will do that then.

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[R. III. 126-131] Q. In looking at page 196, look at letter "h". The statement is made there that there are great differences in white flight among cities. No one knows the policies (local/state, etc) which help control white flight. Would you agree with that?

A. Yes, I would agree with that. I don't know of any definitive studies that would predict when white flight would occur.

Q. Do you agree the white flight concept is to some extent a self-fulfilling prophesy when school boards predict it?

A. I think that influences some, yes. How many, I don't know.

Q. Are you aware that most of the so-called white flight in the country has taken place totally without regard to school desegregation?

A. I am not aware of that, no.

Q. What studies are you familiar with about white flight?

A. Very few.

THE COURT: Mr. Lucas, let me direct a question to you. Let's assume that a plan that will meet with the requirements of the remand encourages white flight and another one that does not meet with the requirements of the remand does not. Are you suggesting this Court has any choice?

MR. LUCAS: No, sir, I am not.

THE COURT: I was unaware of it also, and I was curious about this. Assume it either way. Assume that the differing plans will accelerate or decelerate white flight. This isn't a problem for the Court, is it? Isn't the Court required to approve a plan that will desegregate the schools?

MR. LUCAS: Your Honor, I think what the Court has to measure in deciding what plan to approve or what changes to make and so forth is whether or not rejecting particular alternatives the Board has done so on a basis which is legally proper, or whether or not that rejection, the choice of a less effective or an alternative which is demonstrably capable of actually desegregating the system is based on an impermissible factor. That is what Green spoke to. It may reflect on the

intentions of the body in particular instances. So, that is the purpose of the inquiry.

THE COURT: I don't see whether or not a plan will accelerate white flight which is obviously at this point speculative at best, no one is prepared to say what will, in fact, happen, and —

MR. LUCAS: Well, the defendants have, your Honor.

THE COURT: Let me finish, please. I am just concerned about the utility. It seems to me that the choice here does not bear upon social questions. The choice here depends upon effective desegregation, and this seems to me to be a social problem, and one that the Court is not confronted with.

MR. LUCAS: I think the theorum the Court is being presented with here is that plaintiffs' plan will obviously desegregate. They have rejected using the technique that plaintiffs' plan uses to desegregate because they say, and I am not agreeing with them, but they say it will cause white flight.

THE COURT: Well, your point, Mr. Lucas, as I look upon that, is irrelevant. I look upon these plans as to whether they, in fact, desegregate the schools, and that is all that I look to.

Now, it is appearing to me at this point I have a choice between techniques, because apparently both plans will accomplish the same purpose, and if they do then I would concern myself only with those things that are judicial in nature and not those which are social in nature.

MR. LUCAS: What we are suggesting is perhaps one of the plans before the Court is not capable of a determination that it will, in fact, desegregate the schools, and that is the issue we are testing here obviously for the next period of time, if you decide we may.

THE COURT: I don't think that is the criterion. I suspect, Mr. Lucas, that a question I addressed earlier to Dr. Gordon may be the key question, and that if the Court determines what I said is the bottom line, that is what the school components will be, that is going to be the test of whether a school is desegregated if I read Swan and Keyes correctly.

Now, this I believe is really a collateral question. It might

well be this white flight could be supported by some view as being a good thing. I don't know, and I could care less. I don't see that in terms of these plans of the preferability of one over the other whether it accelerates or decelerates that condition. I don't see that as a judicial consideration.

MR. LUCAS: Your Honor, I agree that the goal, the bottom line as you expressed it, is the purpose of us being here. The question I think that has to be measured is whether or not a particular plan is calculated, reasonably calculated to lead to that goal, subject to the Swan limitations, reasonable travel time and things of that sort. I am not sure that educational soundness, whatever that may mean, is one of the criteria. Mr. Greer keeps suggesting that is one of the three criteria.

I think health, safety and welfare of the child perhaps includes that, but I think the Court is correct getting into the educational theory, what is educational and educationally sound is a judgment that the Court indeed may not make.

THE COURT: I likewise feel that social problems are judgment calls that the Court may not make. I think that may be critical to our entire view of this problem. I see this as a judicial question regarding deprivation of constitutional rights. I don't see it in terms of social goods or social evils. That simply is not for a Court to determine.

MR. LUCAS: Well, my only purpose in examining is to test their theory as to why they rejected a proven effective method of desegregating schools.

THE COURT: I am prepared to assume it either way you prefer, Mr. Lucas, either that the Board's plan will accelerate white flight or that it will decelerate it, and I am prepared to consider your plan either way, and I still come out to the conclusion that that can't be relevant to the determination.

MR. LUCAS: I am really in agreement with the Court.

THE COURT: I would assume so.

MR. LUCAS: What I am arguing is they have used an irrelevant determination to reject a valid technique. That is where I am.

THE COURT: And I am prepared to agree with that. Now, let's go forward.

MR. LUCAS: Thank you, sir.

THE COURT: I am prepared to agree that they may have, but as I say, it doesn't make much difference.

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IV. RELEVANT PORTION OF STATEMENT OF PLAINTIFFS' COUNSEL MADE AT OPENING OF HEARING ON VIOLATION HELD IN NOVEMBER AND DECEMBER OF 1972.

[R. I. 11, Vol. 1] Further, it is not in controversy in this cause that the Dayton Board of Education in December of 1971 eliminated all the boundary lines which the Court sees on that map, and that it called for the adoption, according to certain criteria, of a desegregation plan but it first voided every one of those boundary lines and that the present Dayton Board of Education on January 3, 1972, reestablished the boundaries, in effect drew boundaries for the Dayton School System which boundaries are the same which result in the patterns of segregation which are reflected in the agreement as to the statistical enrollments in the schools at that time.

But for the action of the Board on January 3, those boundaries would not exist as they exist today.

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V. RELEVANT DESEGREGATION PLANS FILED WITH DISTRICT COURT.

A. PORTION OF PLAN SUBMITTED BY DAYTON BOARD IN COMPLIANCE WITH ORDER OF FEBRUARY 7, 1973.

(Title omitted in printing).

I. ELIMINATION OF OPTIONAL ZONES

A. Procedures

1. General

a. All students new to the changed district will be required to attend the newly designated school.

b. Students *may* change to the newly designated school in September, 1973.

2. High School Students

a. Students now attending high school may continue in their present school.

b. Any student who has completed the tenth grade who changes his or her address within the school district during the summer or the school year, may continue in the high school zone where originally enrolled.

3. Elementary School Students

a. Students in present grades K through five must change to newly designated district.

b. Students in present grades six and seven *may* remain in present school.

c. Any student who has completed the seventh grade in a school zone containing a K-8 school or any student who has completed the fourth grade in a school zone containing a K-5 school who changes his or her address during the summer or the school year may continue in the school.

B. Optional Area Changes

1. Elementary

a. **Bell Haven – Ft. McKinley**

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b. **Valerie – Ft. McKinley**

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c. **Residence Park – Jane Addams**

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d. **Horace Mann – Lincoln**

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e. **Cleveland – Belmont Elementary**

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f. **Grant – Belmont Elementary**

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g. **Lewton – Eastmont**

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h. **Westwood – Jackson Schools**

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i. **Westwood – Carlson**

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j. **Carlson – Wogaman**

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k. **Highview – Wogaman**

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l. **Highview – Carlson**

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2. High School

a. **Fairview – Roth**

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b. **Belmont – Wilbur Wright**

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c. **Colonel White – Kiser**

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d. **Colonel White – Roosevelt**

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II. FREEDOM OF ENROLLMENT PRIORITIES

A. Revised Freedom of Enrollment Policy

1. Transfer Within District

The parent of a pupil in good standing enrolled in the Dayton Public School District may request assignment of the pupil to any school building within the district where space may be available to accommodate him. Such requests will be granted according to the following procedures:

a. Students residing within the attendance area of a school building shall have *first* priority to assignment to that building.

b. A student desiring enrollment in any building for whatever reason shall have *second* priority in that building providing his enrollment will contribute to improved racial balance in that building and providing that such transfer will not adversely affect the racial balance of the sending school. Schools will be considered racially balanced if they reflect the over all racial composition of the Dayton School District.

c. Students meeting the requirements for a course available only in the particular building shall have *third* priority for attendance in that building and all students enrolling under this priority for the first time commencing with the 1973-74 school year and each year thereafter shall return to their home school upon completion of the course.

d. Transfer to another school within the city will be made only at the beginning of the first semester.

e. A permit to attend a school outside the attendance area of residence is valid until the end of the school year for which it is issued. It is *renewable on a year-to-year* basis depending upon availability of space in the receiving school. A student requesting renewed assignment shall have priority over new transfer requests. Students now attending a school building under the freedom of enrollment policy may continue their attendance in the assigned building where there is available classroom space without re-submitting an application. However, elementary graduates under the freedom of enrollment policy desiring a transfer for the purpose of meeting requirements for a course or improving racial balance must re-submit an application.

f. Excepting those students returning to their home schools upon completion of a course, students desiring to return to their home school district may do so at the end of the school year, unless an emergency situation arises, and will not be eligible for further free enrollment transfer.

g. An application for transfer may be obtained from the principal of the home school district or the Student Relations Office. All requests for transfer shall be mailed or delivered by the parent to the Student Relations Office for action.

h. Transportation will be the responsibility of the Board of Education for all students eligible and approved for transfer and who voluntarily transfer under Option b where racial balance is improved in the receiving school.

i. This transportation is granted on the same basis as other students being transported. Thus, elementary and middle school children who reside more than 1.5 miles from their schools of attendance, and high school students who live beyond 2 miles and are unable to obtain public transportation that will get them to the school of attendance within one hour, will be eligible.

2. Student Exchanges Within the City

a. Any two pupils, or group of pupils, attending schools within the district may voluntarily exchange places for a semester or a year if such exchange will improve the racial balance in the receiving schools and does not adversely affect the racial balance of the sending school.

b. Procedures shall be the same as for transfers as enumerated above.

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III. FACULTY ASSIGNMENT PRACTICES

Faculty assignments for each school in the Dayton Public Schools shall continue to reflect a racial composition that approximates the ratio of black to white faculty in the entire school system. The Superintendent of Schools is specifically charged with the duty of seeing that this policy is implemented.

Faculty personnel shall continue to be hired on a nondiscriminatory basis. It is the intent of the Dayton Board that every reasonable effort will be utilized to in-

sure that the percentage of black faculty, as related to the entire faculty in the system, will continue, at a minimum, at the approximate level that has existed in the system since 1970.

IV. HIRING POLICIES FOR CLASSIFIED PERSONNEL

A. Clerical, Custodial and Food Service Staff

The racial characteristic for the City of Dayton as reflected in the 1970 census tract is 31.0% black. The racial characteristic for the Dayton Public Schools is somewhat less than this since the zones embodying schools lying outside the City of Dayton are predominantly white in their racial composition.

The clerical staff of the Dayton Public Schools is currently 65% white and 35% black.

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The custodial staff of the Dayton Public Schools is currently 52% white and 48% black. The Food Service Staff presently employs 304 persons. Of these, 181 are white and 123 are black, with a ratio of 60% white and 40% black.

As for the clerical, custodial and food service employees, it is the policy of the Board that the employment of black minorities in these positions will continue to reflect the proportion of the black to white population residing within the Dayton School District.

B. Maintenance Staff

In December of 1972, the supervisor of the maintenance and transportation division, who was white, resigned. This vacancy was subsequently filled by a qualified black supervisor.

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In October of 1972, the Dayton Board of Education entered into a bargaining agreement with the Building Trades Council. A provision in this agreement created a new classification entitled "pre-apprentice trainee". Through the use of this classification, the Dayton Board resolves to integrate the maintenance staff.

Before June 15, 1973, the Board will hire five "pre-apprentice trainee" minority craft employees. Two electricians, two plumbers and one glazier will initially be employed.

Since there are presently eight maintenance craftsmen who have attained age 60 or beyond the opportunity for further minority employment will exist upon the retirement of these craftsmen. Additionally, further opportunity for minority employment will exist if the maintenance department is expanded or any existing craftsman terminates his employment with the Dayton Board.

It is the intent of the Dayton Board to integrate each union craft in the maintenance division. Every reasonable effort will be utilized to employ minority craftsmen, apprentices or "pre-apprentice trainees" in order that the black to white ratio within each craft approximates the proportion of black to white population residing within the Dayton School District.

V. SCIENCE ENVIRONMENTAL PROGRAM

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This plan proposes the establishment of a city-wide elementary science program guided by a trained staff of about 50 persons working in four centers. These staff members will be selected from the most active and innovative science teachers in the Dayton Public schools.

About 11,000 pupils in grades 5 through 8 and their teachers will make a field trip once every two weeks to a center designed and staffed to provide training and experiences as briefly described herein.

About 500 high school students will participate in the centers on a credit basis, to assist younger students in learning to use the science skills in solving problems.

Students in grades 1-4 will visit a science center once or more during the year.

A science-mobile will be used by students to simulate environments too distant to reach.

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The specific content of the program will be developed and promoted by cooperative effort of social studies and science specialists of the curriculum development department. The program will concentrate on concepts that relate to the natural environment, to the use man has made of the products of nature, and to man himself. In the program, these concepts may mingle in any one learning experience, so that the program becomes multi-disciplinary in implementation.

Children will be transported to the Environmental Centers on buses. A trained aide, speaking on an audio-equipped bus, will point out places of interest as the bus moves from the neighborhood school to the Center. Bus trips will vary for a class from time to time with routes chosen so that children may get comprehensive views of the entire city. Audio equipment on alternate backs of bus seats will encourage pupils to interact with the guides. The bus driver and the bus travel resource aide will serve as para-professionals in the course of the day's program.

Activities will vary with the grade level of pupils involved and the program planned for the day. Activities for the elementary grades will be directed toward a general ecological approach for developing environmental awareness. A multi-sensory approach will be used so that the pupil will be more "totally" involved in the activities. Trails and sites will be selected to meet the program needs which have been planned for the day.

Teachers of participating students will become part of the teaching team and will gain expertise in the ways to follow up activity in their home schools.

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The visiting students will be scheduled so as to represent a racial and socio-economic mix similar to that of the entire school district.

VI. PATTERSON-STIVERS VOCATIONAL HIGH SCHOOL

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Beginning in September of 1973 the facility presently designated as Stivers High School will be converted, over a three year period, to a co-operative vocational facility which will be known as the Stivers campus of the Patterson-Stivers Vocational High School. Ninth and most tenth grade students selected for the vocational program will be enrolled at the Stivers campus. The remaining tenth grade and all eleventh and twelfth grade vocational students will attend the Patterson campus (presently the facility housing Patterson Co-operative High School).

The students currently enrolled in grades nine through eleven at Stivers High School and the students of those classes moving into this geographical zone during such three year period will continue to attend Stivers until their respective classes graduate. As of September, 1973 all students residing within the present geographic boundaries of Stivers, with the exceptions as noted above will be assigned on an equitable and non-racial basis to Wilbur Wright and Belmont Highs Schools. The resulting realignment of the Stivers boundaries will provide for increased integration in the two receiving schools.

VII. THE MUSICAL STEREOPTICON

• • •

The immediate objective is the formation of an elementary and high-school all-city band orchestra and chorus. Each performing group will participate in concerts and joint musical ventures with other students of similar interest and proficiency from all schools within the district.

Based upon the successful implementation of the foregoing musical groups it is proposed that the program be expanded in subsequent years to embrace additional musical involvement of students, parents, and citizens. Envisioned at the present time are combined school marching bands (with joint marching performances), joint school pep bands, rock groups, gospel choirs, jazz lab bands, and musical theater groups. The program will be expanded to add one of these groups annually over a six year period.

• • •

Student participation in each group, will be based primarily upon ability and each group shall contain both black and white students. Prospective student members must be members of the musical group of their own school and will be selected for membership in the all-city performing group by the school director.

• • •

VIII. INTEGRATED ATHLETICS

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1. All elementary schools having no minorities on their squads will be required to schedule league or non-league contests with schools that do have such minorities represented. All elementary principals and coaches will be apprised of plans before league organizational

meetings are held in the fall of next school year. At that time this plan will be built into each league schedule.

2. Middle school principals and coaches will make up their athletic schedules. Such athletic schedules must meet the requirements set forth in paragraph 1 above. Because of location of middle schools in different parts of the city the middle school league will present a well-integrated schedule.
3. All high school league schedules will be administered from central athletic office to insure that racial isolation does not exist. In city championship meets all high schools will be entered against all other high schools.
4. Scheduling of all future invitational tournaments of any interscholastic sport will be done in a manner so that the participating schools will represent a cross section of the total Dayton community.

IX. MINORITY LANGUAGE PROGRAM.

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The purpose of a minority language program is to educate teachers and other school personnel to recognize specific legitimate linguistic differences that exist in many varieties of American English. This knowledge should aid teachers in the tasks of teaching reading and writing (in standard English) to pupils of different cultural backgrounds.

X. LIVING ARTS CENTER

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Students enrolled in the Living Arts program are self-selected. Interest, desire, enthusiasm, creative potential and a personal interview are the criteria for acceptance. During the spring semester of 1972, 843 students were enrolled in the program. Currently, the non-white enrollment approximates thirty-five per cent of the entire

enrollment. Including in-school workshops, combined programs at the center reach an average of 2,000 students per week.

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Basically, the Living Arts Center consists of five separate departments; art, creative writing, dance, and drama.

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XI. CONTROL CENTERS.

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A. Security — Rumor Control Center

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To accomplish such an educational program, an atmosphere and climate must be established within the schools which will be a supportive adjunct to the educational program. Community — school — parent involvement must become a constructive force in meeting problem situations and dispelling rumors. An organized ongoing Security-Rumor Control Center should assist in creating the climate necessary to meet the challenges of modern, universal, quality education.

• • •

B. School Guidance Centers

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The Board of Education and staff of the Dayton Public School System are committed to providing a quality educational program for every boy and girl in the District. This philosophy includes all the children of all people, emphasizes the need to reduce school dropouts, and provides a program suited to each student's needs.

Historically, this aim has not been reached, and many students have found the school irrelevant to their needs. These students have dropped out or failed to enroll at all. In other cases economic deprivation has influenced

parents to withhold students from school. The conditions which create these problems must be attacked and the students who are being deprived of the opportunity for an education *must* be taught.

• • •

C. Area Learning Centers

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The Learning Centers will be operated for students between the ages of thirteen through nineteen commencing with the 1974-75 school year. Young people who apply between the ages of nineteen through twenty-one, could be accepted with approval. One Center will be designated for students between the ages of thirteen through fifteen (generally grades 6th, 7th, and 8th), and the other Center will accommodate students between the ages of sixteen through nineteen and others who qualify with approval. The Centers will be for students whose parents or guardians are residents of the Dayton Public School District. The Centers are conceived to meet the individual needs of school dropouts or those deemed potential dropouts by their home school principal.

• • •

D. Dayton Vocational School

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It is proposed that the Dayton Vocational School proposal will become a reality at the start of the 1974-75 school year. Educational training in occupational-type work is offered to suit various student needs and abilities at the Dayton Vocational School. *Coordinated Vocational Academic Education* is being provided for young men between the ages of fifteen and twenty-one, while *Vocational Rehabilitation Training* is offered for another

group composed of both young men and young women ages sixteen to twenty-one.

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B. PORTION OF PLAN SUBMITTED BY DAYTON BOARD IN COMPLIANCE WITH ORDER OF JANUARY 7, 1975.

(Title omitted in printing).

APPENDIX A

STAFFING

In 1969 the Dayton Board of Education indicated its intent to have the racial composition of the staff of each school in the district reflect the ratio of the black-white composition of the staff in the entire system. Although the goal has been attained, the Board recognizes the need for the continuance of this staffing policy. Consequently, the Board reaffirms that staffing assignments in each school will continue to reflect a racial composition that approximates the ratio of the black-white composition of the staff for the entire district.

• • •

APPENDIX B

TEACHER IN-SERVICE

The purpose of teacher in-service as a segment of the desegregation plan is to provide training which enables teachers to work more effectively in newly desegregated situations. An estimated 200 teachers, comprising all faculty members new to the Dayton Public School District will be involved in the in-service programs. Additionally, teachers newly assigned to specific schools and those recommended by their administrators will be accommodated in accordance with space and financial limitations.

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APPENDIX C

ROOSEVELT HIGH SCHOOL

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Roosevelt students presently in the 9th, 10th, and 11th grades will be given the choice of Open Enrollment to attend the high school of their choice. These students will be given priority over any other Open Enrollment movements. Statistics indicate that if the school day is expanded from six one-hour periods to seven one-hour periods that there will be sufficient space in Dayton high schools to receive all Roosevelt students. This expansion will be done without affecting the present five period teaching day of teachers. Therefore, Roosevelt can close its doors as a comprehensive high school in June 1975.

APPENDIX D

DOWNTOWN MAGNET HIGH SCHOOL

and

SATELLITE MAGNET PROGRAMS

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The magnet high school will be located in the downtown area so that all qualified students will have easy access to the formal facilities as well as to various agencies and institutions which will be utilized by the students in the magnet schools.

The satellite magnet schools located at Dunbar and Roth were selected because of their site location and their racial composition. It is the hope of Dayton City Schools that interested and qualified students from throughout the entire district will enroll in the magnet courses and thus reduce isolation at Dunbar and Roth. Moreover, the Dunbar and Roth facilities are adequate since there is ample accommodation for an increase in the student body as well as appropriate accommodation at the two sites for certain specialized courses which have been identified.

The combination of the Downtown Magnet School and satellite locations at Dunbar and Roth will attract a sufficient number of students throughout the city to reflect a more representative racial composition of the City of Dayton. In order to develop an academically and vocationally enriched magnet high school for qualified students, the administration will initiate a challenging course offering program which allows students to approach their potential and to insure the best use of available educational resources.

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APPENDIX E

KISER CAREER CENTER

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Beginning in the fall of 1975, a variety of innovative vocational education programs will be implemented in the Kiser High School building. All programs will be operational by September 1976. Both new and remodeled facilities will house the programs. Programs in remodeled areas should be ready by September 1975 while those in extensively remodeled and totally new areas will be operational in September 1976.

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APPENDIX F

THE STRUCTURED ALTERNATIVE ELEMENTARY SCHOOL

The primary emphasis in this school will be on basic academic skills and subject matter, the establishment of good study habits, and improved self-image resulting from academic achievement. The school will seek to build within each child a sense of responsibility, confidence, pride in that American heritage common to all, a strong respect for law and order,

and a healthy regard and tolerance for the rights of others. The school will provide the kind of quiet and orderly environment needed by many children in order to learn.

• • •

Enrollment at SAES will be open to all students in the Dayton City Schools. The final selection process will result in an integrated student body. Selection of students will be made according to guidelines developed by the Instruction Department in cooperation with the Student Development Department. Parents who send their children to the SAES will do so entirely of their own free will and in so doing must agree to abide by the established rules and policies of the school.

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APPENDIX G

ELEMENTARY SCHOOL MAGNET PROGRAMS: Intermediate Grade Levels

1. MODERN FOREIGN LANGUAGE
6th, 7th, 8th Grades

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In addition to offering instruction in such modern foreign languages as Spanish, German, or French, or one for which the community expresses a great deal of interest, a general language course will be offered.

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In order to implement the program, transporting students to one site would be required. Carlson School has been selected. The school day can be divided into three blocks of time allowing for up to 360 students to be served. For minimal implementation of the program six (6) foreign language teachers will be required. Students will attend the foreign language magnet on days they are not scheduled for the science centers. Foreign language will be a voluntary study option.

2. BUSINESS EDUCATION SKILLS
6th, 7th, 8th Grades

• • •

Many middle-school age youngsters will benefit from typing and other business education subjects, if available to them. For these pupils manipulative skills will be further developed, other disciplines understood and appreciated, knowledge gained concerning careers in business and all of its related fields, and a variety to the school curriculum provided which will enhance the holding power of the educational processes.

Youngsters who select this magnet will be transported from their home schools to the magnet site on the days that they do not attend the science centers. It is anticipated that approximately 300 students can be accommodated by this magnet in three time blocks per day.

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3. CAREER MOTIVATION CENTER
4th and 5th Grades

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The basic structure of the program will give the students who elect to attend the Center the opportunity to explore four broad occupational groupings during the school year.

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During the school year students will have the opportunity to explore four occupational groups. They will spend 4 hours per week (2 – 2 hour sections) at the center. Each of the four teachers at the center will have two 2-hour classes daily, four days per week. Each class will enroll approximately 25 students. It is anticipated that the implementation year 1975-76 this center will serve approximately two hundred twenty students.

• • •

Occupational Group Description

• • •

Group	Sub-Clusters
I.	Business & office
	Marketing & Distribution
	Communications & Media
II.	Animal Science & Agriculture
	Environment
III.	Foods, Housing, and Hospitality
	Health
	Recreation
IV.	Construction
	Manufacturing
	Transportation

APPENDIX H

(Other Programs)

1. EXPANSION OF SCIENCE CENTER PROGRAM

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Science programs in Dayton elementary and middle schools as in other large city schools, vary widely in sophistication. Books and other curricular materials are provided; however, facilities and equipment for science teaching and learning are

minimal in most buildings. The expertise of teachers in guiding the learning of children in science ranges from imaginative and exciting to the direction of pupils in reading science textbooks.

The Dayton Board of Education acted to improve this situation through the establishment of four Science Centers in 1973. The 3,500 youngsters attending the five day Dayton middle schools were exempted from the program. It is now proposed that these children participate in the Science Centers effective September 1975.

2. SCIENCE ENVIRONMENTAL CENTER

• • •

A sustained period of students inter-racial contact involving both a structured and non-structured situation where students can freely and naturally interact.

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An outdoor camping experience proposes to provide for the establishment of an environmental program to involve all sixth grade students on a voluntary basis. A racially balanced group of approximately 60 students and their teacher will comprise one group of campers. By using two different camp sites, it is estimated that the entire 3,200 sixth graders will have the opportunity for this experience during the fall and spring sessions.

• • •

3. ALTERNATE SCHOOL PROGRAM for INTERMEDIATE GRADE LEVEL STUDENTS

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The Dayton Public Schools like most urban school districts today has a sizable number of sixth, seventh and eighth grade students who have either become alienated from the regular school program or who are experiencing academic

and interrelational difficulties to the point that early school leaving (dropping out) will probably be the outcome. A high percentage of those who drop out of school and into the world of the unemployed and unemployable are close to the age of sixteen. Invariably school records indicate that those leaving at this time experienced little success and varying degrees of alienation in the intermediate grades.

• • •

The program will involve 150 students representative of all kindergarten through eighth grade elementary schools and middle schools in the Dayton School District. The population will reflect the same racial composition as does the total Dayton school population and efforts will be made to balance the enrollment with regard to sex and to economic backgrounds of the participants. Prospective students will initially be identified by their home school administrator but the final decision concerning prospective enrollment will be made by a committee consisting of a school psychologist, the Director of Alternative Education Programs, and the project coordinator. Prior to enrollment an applicant, along with a parent or guardian, will be interviewed by the coordinator or his designee at which time the school's program will be explained. No student will be enrolled without parental permission. Also, all students will have the right to return to their home school at the conclusion of any semester.

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4. SPECIAL NEEDS PROGRAMS

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The following magnet programs serve the whole school community:

The Daytime Center

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Handicapped Programs

• • •

Intergovernmental – Summer Program with City of Dayton

• • •

VEET (Vocational Exploration, Experience, and Training)

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5. ORIENTATION AND REGISTRATION CENTER

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In depth in-service for orientation and registration for all student services advisors, student action advisors and counselors will be provided, as will all information concerning all programs, courses and extra curricular offerings in the Dayton School System.

6. COMPONENT FOR MONITORING DESEGREGATION

In each component reference has been made to "reflecting the existing racial composition of the school district." The current racial composition of the Dayton school district is approximately sixty per cent white and forty per cent black.

In order to establish that these goals are being met, an advisory committee under the direction of the Superintendent of Schools, will monitor and make recommendations pertinent to the implementation of the components of the desegregation plan. The committee will establish its own monitoring procedures, but will report to the Board of Education, through the Superintendent of Schools, no less than quarterly. The initial life of the committee will be for three years. After this time, if the plan has been fully implemented, the committee will be reconstructed and will monitor less vigorously and report less frequently. It is anticipated that within four years, once the plan has been fully implemented and operational, the committee will no longer be necessary, and will be phased out.

7. ELEMENTARY ATHLETICS

To implement an integrated atmosphere for seventh and eighth grade interscholastic athletics, already present in the high school interscholastic athletics, programs will move toward city-wide seventh and eighth grade competition for the 1975-76 athletic seasons.

8. METROPOLITAN EXCHANGE PROGRAM

The Board will continue to explore voluntary metropolitan integration authorized in its January 1972 resolution. The Board recommends that every school district within a 15-mile radius of Dayton have the opportunity to exchange a number of student spaces in the Dayton District for a like number of student spaces in its district.

APPENDIX I

A METROPOLITAN EDUCATIONAL CENTER FOR THE COMMUNICATION ARTS

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It is proposed that an educational center for the communication arts be developed for public and non-public juniors and seniors from the greater Metropolitan Dayton area, inclusive of all of Montgomery County. Students, who are recommended by their respective high schools, will select the subject area in which they wish to gain in-depth experience and receive specialized instruction. Many high school students complete their secondary curriculum requirements in three or three and one-half years and it is during the eleventh and twelfth grades that opportunity is provided for variation in schedule and program.

• • •

The career-oriented phase of communication arts education will attract students from every school, every section of the

total community, and will represent all racial and ethnic groups; racial balance will be maintained. Classes offered during morning and afternoon hours, flexibly scheduled, will accommodate 600 or more young people who can benefit by concentrated study and skill development in this rapidly expanding career field.

C. PORTION OF PLAN SUBMITTED BY PLAINTIFFS IN COMPLIANCE WITH ORDER OF JANUARY 7, 1975.

(Title omitted in printing).

• • •

Data for the current school year for the Dayton Public Schools indicate there are 47 elementary schools (Table I) with an enrollment of 28,588 pupils, 13,164 (46 per cent) of whom are blacks. There are 5 middle schools with an enrollment of 3,537 pupils, 2,431 (68.7 per cent) of whom are blacks. Eleven high schools enroll 14,820 pupils, 6,739 (45.5 per cent) of whom are blacks.

The elementary schools display a wide range of grade organization — prekindergarten through grade 2 (1); through grade 3 (1); through grade 5 (6); and through grade 8 (11); kindergarten through grade 3 (2); through grade 5 (3); and through grade 8 (19); grades 4 through 8 (2); grades 4 through 5 (1); and grades 3 through 5 (1). Middle schools house grades 6 through 8, and the high schools grades 9 through 12.

Sixteen of the elementary schools are over 90 per cent black in enrollment; 17 are over 90 per cent white. Five secondary schools are over 90 per cent black; two are over 90 per cent white.

• • •

TENTATIVE SAMPLE FORM FOR HIGH SCHOOL APPLICATION

Name .....

Address .....

Class you will enter in September 1976:

Freshman .... Sophomore .... Junior .... Senior ....

High school attendance zone in which you reside .....

If you are currently attending a high school, indicate which one .....

On this form you will be asked to indicate three choice of high schools for September 1976. Be sure to read carefully the material below so that you will understand how to make your choice.

1. Juniors and seniors will be allowed to continue in their present school, if they so choose.
2. Except for Belmont-Dunbar and Wilbur Wright-Roth, all students who elect to attend the school in their attendance zone are assured that they will receive that assignment.
3. Any student may request attendance at any of the schools in the city, but only a very limited number of students will receive assignments to schools outside the attendance zone of their residence.
4. Students currently enrolled at Stivers-Patterson will be able to continue at that school, if they so choose.
5. Students residing in the Roth-Wilbur Wright zone and the Belmont-Dunbar zone should understand that these four schools will be desegregated in September 1976. Obviously many students residing in those zones will be assigned a school on the opposite side of the city from where they reside. Entering freshman and sophomores will be randomly selected for these assignments until the required quotas are met. Some students or groups of

students might prefer to volunteer for their assignment because in that way groups of students could be assured of being assigned to school together. Every possible convenience will be afforded students electing or assigned to a distant school, e.g., on time express buses, late afternoon and evening activity buses, and whenever appropriate, home-to-school and school-to-home delivery.

D. PORTION OF PLAN TRANSMITTED BY DAYTON BOARD IN DECEMBER OF 1975.

2. *RTA Transportation should be utilized more extensively in light of the lower cost.* This would be especially true at the high school level. Whereas, the new desegregation plan will necessitate some increase in the numbers of students requiring transportation, RTA should be utilized almost exclusively to handle such increases. A corollary benefit would accrue if the Board owned the St. John buses. The District could then utilize RTA to the maximum; even to the point of creating special routes and inaugurating new service, which they cannot now implement because of laws governing competition from the contractual line (St. John). If the Board acquired St. John, it could utilize RTA to streamline the total transportation program. RTA routes are such that all areas of the city are covered with no location, except too remote areas, more than .4 miles from a route.
3. *The utilization of taxicabs for transportation should be eliminated.* Two primary reasons justify this recommendation.
   A. It is extremely expensive transportation for the minimal results.
   B. It tends to create highly emotional feelings on the part of Black students. They react angrily when observing White students arriving at the Roth and Dunbar magnets via taxicabs. • • •

E. REPORT OF THE MASTER JOHN A. FINGER.

(Title omitted in printing).

On December 29, 1975 the Honorable Carl B. Rubin, United States District Judge, appointed me (John A. Finger, Jr. of Providence, Rhode Island) Master in the above titled action, directing the supervision of the redistribution of students on a school by school basis, and the establishment of attendance zones under the guidelines to be followed whenever possible.

Previously the Court had appointed me as Consultant to the Court directing the School Board to provide assistance and information as requested by the Consultant.

No hearings have been held in carrying out the duties assigned to the Master. One meeting was held with the attorneys in the case to inform them of procedures and activities being followed. As Master, my activities have consisted of meeting with School Board personnel, primarily the Superintendent of Schools and his executive staff, the reading and analyzing of reports and proposals prepared for me by the Superintendent and his staff.

Dayton, Ohio, a city of 245,000 is located in southwestern Ohio, some 50 miles due north of Cincinnati. The city is located in the east central part of Montgomery County, population 610,000. The standard metropolitan area, of which Dayton is the center city, has a population of approximately 850,000.

The Dayton School District is not coterminus with the city of Dayton. Portions of Harrison Township, Madison Township, Mad River Township and the village of Riverside are included in the Dayton School District. Some portions of the city of Dayton are in the Harrison Township School District, the Jefferson Township School District, and the Mad River Local School District. Appendix A is a map showing the Dayton School District and the city of Dayton boundaries. The Dayton School District has a population of approximately 268,000 and a school population of 45,000, of which slightly

less than 50% are black. With the exception of the Trotwood-Madison District, which is approximately 25% black and Jefferson Township District which is 80% black, the school districts in the Dayton standard metropolitan area are predominantly white. Of the approximately 170,000 students in the Dayton standard metropolitan area, less than 30,000 are black. Twenty-two thousand (22,000) of these black students are in the Dayton School District.

The Court's Order of Appointment limited my activities as Master to those of supervising the School Department in the development of new attendance zones and to reporting the numbers of students to attend each school, but I would be remiss in my responsibilities if I did not include some comments about my views on Dayton and its metropolitan area.

I have been subjected to a perspective on the school in Dayton from a variety of sources, a perspective which views many black neighborhoods as undesirable, and a perspective which recognizes that some white parents will be reluctant to send children to schools in these neighborhoods because of concern for the child's social well-being and perhaps for his physical well-being as well. Each person has his own perceptions through which situations are interpreted. I am glad to be able to report that I have not seen disorganized schools in Dayton. From what I have seen, parents should not be apprehensive for their children's safety and effective education in any of the schools in Dayton.

Many people have expressed to me their concern that unless some corrective action is taken Dayton will become increasingly black. Whatever the causes, the fact is that Metropolitan Dayton is predominantly white, but within it is a sector that is predominantly black.

I have made some brief studies of the history of Ohio School Districts and the laws and regulations pertaining thereto. Because historically Ohio had a great many small school districts, procedures have been established for the elimination and consolidation of districts. According to a United States Office of Education Report on the Statistics of State School

Systems (OE, HEW, OE 20020-66) in 1931-32, there were 2043 school districts in Ohio. By 1951-52 there were 1429 and in 1965-66 there were 738. In 1975 there were 617.

There are a number of authorized procedures for changing school district boundaries. The State Agencies, the State Board of Education, the County Board of Education, the Dayton Board of Education, and other local boards of education in and near Montgomery County can initiate procedures authorized by statute of the Ohio General Assembly to alter school district boundaries. In a state where there are a number of cities with extensive racial isolation, some of which are in desegregation litigation, one would have expected the State Board of Education to be actively involved in studies of the feasibility of achieving the elimination of racial isolation through alteration of school district boundaries, especially when such studies and resultant recommendations are specifically authorized by the General Assembly, but I believe none have been recently undertaken. Given too, the consequences for the entire area of increased racial isolation in the Dayton School District, one would think that all citizens in the metropolitan area whose center is Dayton, would recognize their stake, and would seek to assure the healthy development of the metropolitan area, yet neither the local boards nor the County Board acts. Indeed the facts may be that the metropolitan area schools are withdrawing from cooperative activities with the Dayton School District because they fear involvement in a metropolitan plan.

The Court is required by the Order of the Sixth Circuit to desegregate the Dayton School District Schools by September 1976. There are, however, some additional steps that the Court might consider.

The Court could direct the State Board of Education to submit proposals for the redistricting of the Dayton School District and surrounding districts.

The Court could direct the school boards of all districts, which are in Montgomery County and possibly Greene County, too, to submit to the Court a redistricting plan which

would bring each district to not more than 30% black with a view to providing district desegregation plans in which no school would exceed 40% black.

There have been proposals made by Professor James Coleman of the University of Chicago to utilize a voucher plan as a means of desegregation. Metropolitan Dayton might be an area where such a plan would be workable as one of several desegregation procedures for the area. The Court could direct the State Board of Education or some other state agency to undertake the detailed development of such a plan and could require the cooperation of the area local boards of education.

RECOMMENDED DESEGREGATION PLAN FOR DAYTON

Introduction

A desegregation plan must first comply with the mandates of the Court which establishes the guidelines for what is to be done, but one cannot be unmindful of the magnitude of the problems which can be encountered in implementing a desegregation plan.

For a plan to work effectively means that children will receive good educational experiences, and that the schools and the city will thrive and prosper. What actually will happen in Dayton depends upon the citizens in Dayton, and what they do both individually and collectively. Desegregated schools can be healthy learning environments where children and students share their common bonds as people and citizens of Dayton. To make desegregation not the end of the world, but the beginning, requires patience and tolerance and cooperation. Children will not be harmed because they are in desegregated schools, but each child and each student needs the assurance of parents and of the community that the program can function effectively. Even with the most efficient

planning there are bound to be problems. Each person needs to exercise restraint so that problems and confrontations can be resolved, rather than be magnified and intensified.

Desegregation plans differ in the way in which students are assigned to schools. While in some cities, desegregation requires only the alteration of attendance zones, this technique is neither feasible nor fair when the black and white communities are isolated from each other. For most of the elementary schools and for some of the high schools, there does not seem to be an alternative, except to pair schools.

Once the decision to use pairing has been made, several alternatives are available as to the method of assigning students to schools. A frequently used method is the grade assignment plan. In this procedure two paired schools, one in a white residential area and one in a black or minority residential area, serve different grade level students. One school might enroll only students in grades 1 through 3, and the other school in the pair enroll only students in grades 4 through 6. A slight alteration of grade assignment pairings would be to develop a new grade level organization such as 1-5, 6-8, 9-12 or 1-4, 5-8, 9-12, and select the schools to serve grades 5-8 so that all are located in one or the other of the black and white communities. To avoid having the younger children of one or the other communities being always the group bused away from their residential area, a city might be zoned into three or four large districts with the elementary schools (grades 1-4) being on one side of the city in one district and on the other side in another district. Where there are geographic barriers defining such districts such a procedure is most workable, for otherwise citizens residing in close proximity to each other would experience differing treatment. Some might have their elementary school children bused away from their residential area for four years, while others would have their middle school children (grades 5-8) attending school away from their residential area.

There seems to be widespread agreement among the administrative staff of the Dayton Board of Education that the

grade structure should be uniform with every elementary school serving grades K-8, and high schools enrolling grades 9-12. While some citizens might disagree with that decision, preferring to continue with the middle school organization, I have felt it inappropriate to not allow such decisions to be made by those responsible for the educational programs.

One provision of the Court Order indicated that children were not to ride school buses for more than twenty minutes, nor to be bused a distance greater than two miles, if it was possible to achieve this and still comply with the requirement of desegregation of the schools.

These suggested Court Guidelines cannot be met. Wherever feasible, schools have been desegregated by restructuring attendance zones so as to comply with the suggested Guidelines and so as to reduce transportation. Some paired schools are in close proximity to each other and the distances and travel times are within the suggested Guideline. Some paired schools are more than five miles apart. However, distance probably is not as important a criterion as time of travel. Despite the large distances separating some school pairs, the longest travel time should not much exceed twenty minutes. The School Board through its administrative staff should make every effort to minimize travel time and to provide maximum comfort and convenience for students.

Elementary School Pairing Plan

The plan for Dayton utilizes a unique method of pairing elementary schools. While some elementary schools in Dayton are to be desegregated by redefining attendance areas, others will be paired. In the paired schools each child will spend one-half of each year in the school near home, and the other half of the year in the other school. Thus, every child will be a member of two schools. The child will not change classmates nor teachers, but will at the middle of the year change buildings.

The advantages to this method of pairing are:

1. The child remains with the same teacher and classmates throughout the year.
2. Every child, teacher, and parent is involved in bringing unity to the two schools.
3. The procedure is fair to each person and each group without requiring an extensive system of keeping track of which child has been assigned a school away from home a previous year.
4. Parents of paired schools can work together to assure the maintenance of quality education, with all sharing concern for both schools. Some might construe as a disadvantage to this method of pairing the fact that teachers must change buildings at midsemester. Undoubtedly, this will be an inconvenience to teachers, but this inconvenience should be outweighed by the advantages of bringing the two paired schools together as a single unit.

The pairings will operate in this way:

1. During the summer or prior to the close of school this year, teachers and principals in the paired schools will decide which teachers will be assigned to the two schools in a pair. They will select the students who will make up each class.
2. When schools open in September, students will report to the school in their attendance zone. There will probably be a few days during which children stay in that school while the children are being selected for the desegregated classes.
3. One-half of the children in every paired school will be assigned to the paired school not in their attendance zone. When the program starts, the children will leave that school and go to the other school in the pair.
4. When they arrive they will meet the other half of their

classmates and their teacher whom they will be with for the year.

5. Bus routes will be established so that travel time between schools will be as short as possible. In some attendance zones all children will walk to their school and the buses run from school to school, but where it will be more convenient, pick up points will be established so that children will not have to first walk to school.
6. At midyear, the schools will close for a few days while teachers and some supporting staff move from one paired school to the other. When schools reopen, those students who had been attending the school in their attendance zone will go to the other paired school and vice versa. Their teacher and their classmates will be in that school.

Pairing Involving More Than Two Schools.

In some instances two schools are paired with one school. This arrangement does not alter the experiences of individual children or classes, for the children involved remain members of two schools. Where one school is paired with two schools, the administrative staff (principals and teachers) in devising the classes should select children so that for the most part, the children residing in the same geographic area are assigned to the same one of the paired schools. This does not require precisely defined zones. It rather is an informal arrangement so that neighbors in a geographic area have all of their children in the same two schools.

With but one exception in the paired schools, each school of the pair is almost exclusively one race or the other. Where there are but a few children of the opposite race in the predominantly one-race schools, those children are to be included in the pairing arrangement. The one exception is the Van Cleve district. The Van Cleve School is to be a dual function

school. One part of the school will be an integrated school that does not participate in the pairing. This part of the school will enroll approximately 350 students, half white, half black. The other part will participate in the pairing with Residence Park. The School Board may either rotate the white students on a yearly basis who are assigned to the integrated part or define a sub-attendance zone in the Van Cleve district, in which an integrated population resides and assign those students to the part of the Van Cleve School which does not participate in the pairing. If there are other similar situations, or if others develop, the above procedure should be followed.

SCHOOL ASSIGNMENTS

Northern Region

1. Many of the attendance zones in the northern region have been redefined. A Cornell Heights zone includes part of Fairport, Fairview, Jefferson, and Gardendale. Some of Jefferson is not in the northern district. Some of Jefferson is zoned to Fairview. Some of Hickorydale and Gettysburg is zoned to Belle Haven. The attached map defines the new attendance zones.

2. **Paired Schools:**

   Cornell Heights – Meadowdale
   Brown – Jefferson
   Shiloh – Fairport
   Loos – Fairport
   Gardendale – Valerie

3. **Schools desegregated by zone changes:**

   Belle Haven
   Fairview
   Hickorydale
   Gettysburg

Central Region

1. An extended zone including parts of Jefferson and Van Cleve has been defined for McGuffey, Webster, and Allen. A MacFarlane zone has been defined encompassing parts of Weaver and Edison. Weaver is to be closed. The attached map defines the new attendance zones.

2. **Paired Schools:**

   Huffman – Jackson
   Franklin – Edison
   Lincoln – MacFarlane
   Washington – MacFarlane
   Residence Park – Van Cleve
   Residence Park – Kemp
   Orville Wright – Westwood-McNary
   Ruskin – Westwood-McNary

3. **Schools Desegregated by Zone Changes:**

   Allen, Webster, McGuffy.

   An area formerly in the Jefferson zone is included with Allen, Webster and McGuffey. The School Department will assign these students so that each of the schools will enroll approximately the same proportion of black students. Some black students now attending McGuffey will be reassigned to Webster or Allen.

Southern Region

1. Irving area is rezoned. The Irving School is closed and the students assigned to the Whittier School.

2. **Paired Schools:**

   Grant – Carlson
   Drevel – Jane Addams
   Troy – Belmont
   Troy – Horace Mann
   Troy – Eastmont

Emerson – Whittier
Patterson – Whittier
Lewton – Highview
Cleveland – Wogaman

PROJECTED ENROLLMENTS

Northern Region

	Number of Students	% Black
Cornell Heights – Meadowdale	1250	53%
Brown – Jefferson	1750	51%
Shiloh – Fairport	700	45%
Loos – Fairport	800	45%
Gardendale – Valerie	625	54%
Belle Haven	825	42%
Fairview	750	45%
Hickorydale	325	51%
Gettysburg	425	55%

Central Region

	Number of Students	% Black
Huffman – Jackson	1025	50%
Franklin – Edison	1100	43%
Lincoln – MacFarlane	1300	49%
Washington – MacFarlane	625	49%
Residence Park – Van Cleve	1100	47%
Residence Park – Kemp	900	47%
Orville Wright – Westwood	900	47%
Ruskin – Westwood-McNary	1100	51%
Allen	900	44%
Webster	850	44%
McGuffey	425	44%

Southern Region

Grant – Carlson	800	48%
Drexel – Jane Addams	850	45%
Troy – Belmont	800	44%

Troy – Horace Mann	325	44%
Troy – Eastmont	775	44%
Emerson – Whittier	725	50%
Patterson – Whittier	725	50%
Lewton – Highview	575	49%
Wogaman – Cleveland	1675	47%

Note: Some of the facilities at Miami Chapel or another nearby school may be utilized in addition to the Troy Elementary School

Special Programs and Schools

Handicapped and Special Education Programs

Programs for handicapped students and special education programs as well as the Occupational Work Adjustment and Alternate Middle School programs will remain in their present locations or be relocated at the discretion of the Board of Education. Students assigned to these programs need not be involved in pairing. Kindergarten students will attend the school in their attendance zone or will be assigned to other nearby schools at the discretion of the Board of Education.

Magnet Schools

Miami Chapel will continue as an open enrollment magnet school with a specialized structured curriculum.

Longfellow will be an elementary school serving grades 1-8 or other grades if the Board of Education deems that appropriate. Longfellow will have a special Individual Guided Educational Program.

Any elementary level student is eligible to attend either of these schools. The Board of Education should try to accommodate requests for enrollment in these schools. However, the Board is not required to run an extensive transportation network to honor all requests, nor is the Board to allow the basic pairing structure of the desegregation plan to be come imbalanced because of enrollment in these schools. The target

population for school enrollments should be 50% black and 50% white, but the Board may allow additional enrollment within the Court Guidelines. Additional open enrollment magnet schools may be operated if applications so warrant, but these are subject to the above strictures.

Magnet Programs for Grades 6, 7 and 8

In the current school year a number of middle schools are in operation. Students not attending middle schools are presently allowed to elect the magnet programs so that they have a considerable amount of choice available to them which provides a diversity of programs.

The onset of desegregation during the 1976-77 school year creates some difficulties with these magnet programs because the students being bused between paired schools would be bused again to attend magnet programs. Arranging transportation so that students would attend a magnet program on the way to or on the way home from a paired school could partially but not completely alleviate this problem. With the upper elementary grades, grades 6, 7 and 8 being assigned to elementary schools, rather than larger unit middle schools or junior high schools as is the usual practice elsewhere, some special provisions need to be made for this group of students.

The school administrative staff has not yet completed its plans for the location and operation of its magnet programs. These programs will continue and be so located as to minimize transportation and provide convenient program availability for all students.

RECOMMENDED DESEGREGATION PLAN FOR HIGH SCHOOLS

The Dayton administrative staff acting under my direction has submitted some suggestions to me for the high schools. Especially endorsed and commended are their proposals to continue the Alternate Learning Center, the Downtown Magnet High School, the Job Training Center, the Kiser Career Programs, and the Citywide Cooperative Programs at Stivers-Patterson. The proposal to create a Metropolitan Education Center for the Communication Arts (MECCA) is an excellent one. I have reviewed that proposal in considerable detail and believe it is truly an innovative and valuable project. Funding for this project is only partially assured. Since this would be a school to serve Metropolitan Dayton, I recommend that the Court direct the County Boards of Education of Montgomery and Greene Counties, the State Board of Education and the Dayton Board of Education to jointly prepare a proposal for the funding and implementation of MECCA.

The Dayton Board of Education has initiated programs in Computer Technology at Dunbar High School and Communication and Mass Media at Roth High School. These programs have not attracted many students, in part because they have been phased in during the current school year. In the long run the desegregation of Roth, Dunbar, Belmont, and Wilbur Wright high schools will depend upon these schools providing meaningful and effective programs for all students and upon specialized programs being offered in these schools which will attract diverse populations to them.

The Dayton Board of Education should prepare and submit a plan for locating more unique and specialized programs in these four high schools so that students can make meaningful selections among these schools.

While it may not be possible to effectuate much program change by September 1976, the Board should develop long-term and short-term program strategies for these schools.

The recommended plan for desegregating the high schools in Dayton primarily utilizes attendance zones, but a rather involved procedure must be established because there are exceptions to the general rule that students will attend the high school in their attendance zone.

The exceptions are:

a. Students who will be juniors or seniors in September 1976 may continue in their present high school.
b. Students may apply to the non-zoned schools, which are Stivers-Patterson, and Kiser (grades 11 and 12).
c. Some students in the Dunbar Zone are to be assigned to Belmont, some in Belmont assigned to Dunbar, some in Wilbur Wright assigned to Roth and some in Roth assigned to Wilbur Wright.
d. Some transfers to high schools outside a student's attendance zone may be permitted when the transfer aids desegregation.

There have been extensive discussions with the school administrative staff as to the procedure to be followed in assigning students to Dunbar-Belmont and Wilbur Wright-Roth. One proposal was to sub-divide each of the attendance zones of Belmont, Roth, Dunbar and Wilbur Wright high schools into two parts, an A Zone and a B Zone, and in alternate years to assign students on a rotating basis from these sub-zones to one or the other of the paired high schools. Even though it fulfills the Order of the Court this sub-zoning procedure of the administrative proposal has some shortcomings, the most serious of which is that it reassigns more students than is necessary.

My recommendation is for a procedure that would have all students be given choices of high schools. These choices would be accommodated, where possible. When the choice could no longer be accommodated, students would be selected randomly for their assignment. This selection procedure would be repeated each year, but students entering their senior year in a high school would have the right to continue in the school they attended the previous year. This procedure seems to me to be fairer to individual students, and to gradually allow specialized programs to be developed, which would attract

an integrated student body to the currently segregated high schools.

Obviously in the coming year many students in the Belmont-Dunbar zone and in the Roth-Wilbur Wright zone will be required to attend the more distant school, for it seems unlikely that sufficient students will choose schools in the proportions that meet the Court Guidelines. There could be considerable voluntary choice for the more distant school since students or groups of students might prefer to volunteer, and thereby be assured that present groups of friends are not broken up by a random selection process.

The number of students to be reassigned would be as follows:

	Entering 9th Grade	Entering 10th Grade
From Belmont to Dunbar	225	225
From Dunbar to Belmont	150	150
From Wilbur Wright to Roth	200	150
From Roth to Wilbur Wright	125	125

The procedure for establishing high school attendance is further clarified in the following pages, which consist of a preliminary sample form which would be completed by all students, who will be in high school in September 1976. The sample form is tentative for it needs careful examination by the school administrative staff to assure that all contingencies have been included. The School Board, not the Court, would provide the assurances of transportation efficiency and convenience indicated on the sample form.

The procedure of random selection of students does not exclude the possibility of assignment by geographic areas. After students have made their choices of high schools and the assignments have been made based on these choices, the School Board administrative staff could determine the number of students which must be reassigned between Dunbar-Belmont and Wilbur Wright-Roth. They could then define an area, several areas, or a number of small areas containing

the proper number of students and the students residing in these areas would be reassigned.

If you reside in the Roth, Wilbur Wright, Belmont or Dunbar zone and you *volunteer* for an assignment to the more distant school, you will be making a commitment for only one year. At the end of the year you may request a different assignment. In that case your name would be placed in the random assignment pool. If your name is drawn, you would continue at the more distant school. Those who for September 1976 are randomly selected for assignment at the more distant school will have that as a permanent high school assignment.

Please complete the remainder of this form.

If you are currently enrolled in a high school, do you wish to continue in that school? Yes ..... No .....

Irrespective of how you responded above, please indicate your choices of high schools below.

My first choice is .....
My second choice is .....
My third choice is .....

PROJECTED ENROLLMENTS FOR HIGH SCHOOLS
SEPTEMBER 1976

	Total Enrollment	% Black
Belmont	2100	23%
Dunbar	1400	68%
Fairview	1000	54%
Kiser	900	35%
Meadowdale	1900	47%
Roth	1250	78%
Stivers-Patterson	2800	55%
Colonel White	1300	65%
Wilbur Wright	1550	32%

Note: The Freshman and Sophomore classes at Belmont, Dunbar, Roth and Wilbur Wright will have the following estimated enrollments:

	Total Enrollment	% Black
Belmont	1150	34%
Dunbar	800	44%
Roth	575	47%
Wilbur Wright	900	40%

ADDITIONAL CONSIDERATIONS AND RECOMMENDATIONS

Transportation

An efficient transportation system is very important to assure the effectiveness of desegregation. Long, crowded bus rides, late buses, or lack of buses for after-school activities, create discontent which may be directed at the Court or desegregation rather than at an inefficient transportation network. Students are entitled to as much convenience as can possibly be afforded them. Students should not be penalized by inability to attend after-school activities because of new school assignments.

The School Board should complete a preliminary transportation plan as soon as feasible reporting their overall plan to the Court in sufficient detail to show whether sufficient buses are available to provide the needed transportation.

Safety of Students

The School Board should work with law enforcement agencies to prepare contingency plans to assure the safety of all students. The School Board should informally describe to the Court their progress in developing contingency plans assuring themselves and the Court that law enforcement officers are adequately briefed and trained.

Training of Teachers

The School Board is to make certain that all teachers are adequately prepared to deal with the new situations which will be encountered. If there are special problems in training teachers for the desegregation program which warrant the Court's consideration, it should be informed of the needs and problems and of the possible ways in which resolutions can be effectuated.

Continuation of Services to Students

Federal funding regulations under Title I sometimes result in individual students losing eligibility for special services. The School Board should make every effort to see that students are in no way deprived of services as a result of their reassignments. The Court should be informed if there is an inability to provide needed services, indicating what steps needs to be taken.

Funding for Desegregation

Throughout the nation, urban centers tend to have higher tax rates than surrounding areas. The problem of providing adequate funding for all services, including education, becomes exacerbated when the tax base of cities erodes. Dayton is no exception to what seems to be the general rule of higher city taxes. Intervention in this problem is difficult, but the Court needs to be continually apprised of the funding situation. The Board of Education has made applications for federal funds and seems assured that sizable funds will be available. However, like other governmental agencies, the Dayton Board of Education has a limitation on the availability of contingency funds of the kind necessary to support the specialized services which are needed in carrying out school desegregation. A successful educational program in Dayton is essential to assure citizen satisfaction. The Court may wish to request regular reporting by the School Board on its financial condition.

VI. RELEVANT PLEADINGS

A. PLAINTIFFS' REQUEST FOR ADMISSIONS

• • •

Plaintiffs, pursuant to the Federal Rules of Civil Procedure, request each defendant to admit the following facts. In addition, plaintiffs request that the following facts be stipulated to by defendants prior to the pre-trial conference scheduled for October 23, 1972.

1. In 1918 defendant Dayton Board assigned 4 black teachers to a frame two-story house which was converted to a school building for black students and which was located immediately behind the Garfield school, a brick building. All white children and all white teachers were assigned to the brick building; only black teachers and black students were assigned to the frame structure.

2. The following additional facts pertain to the Garfield school, referred to in Request No. 1:

(a) In 1922 a lawsuit alleging unlawful segregation was initiated by a parent of one of the black students assigned to the frame structure behind the Garfield school. This lawsuit, entitled *Reese* v. *The Board of Education of the School District of the City of Dayton*, No. 670 (Ohio App., 2d Dist., Montgomery Co.), resulted in a decision by the Court of Appeals on July 3, 1925, declaring the alleged segregation practice at the Garfield school unlawful. This decision was affirmed by the Supreme Court of Ohio, February 16, 1926. 114 O.S. 188

(b) After 1926, the Dayton Board continued to maintain separate classes for black students with black teachers in the frame building behind the Garfield school although the Reese children (involved in the lawsuit (paragraph (a), *supra*) and a few other black children were allowed to attend integrated classes after the Ohio Supreme Court's decision.

(c) At least 90% of the black children remained in the frame building until about 1932, when the classes in the frame building were moved to the brick building. At that time (in the brick building) black teachers continued to teach all black classes.

(d) White students who lived in the Garfield attendance area were allowed to transfer to other schools during the 1930's. In 1936 Garfield became all black in student enrollment and, at about the same time, an all black faculty was assigned to the school.

(e) After 1936, the Garfield school remained 100% black until it was closed in 1961.

(f) In 1962 the Garfield attendance area was absorbed by the newly-created McFarlane attendance zone.

3. The McFarlane elementary school (the former Dunbar High School) opened in 1962 under a newly-created zone with a virtually all-black student enrollment and staff. The McFarlane student enrollment in 1971-72 was 99.6% black.

4. The following facts pertain to the Wogamon elementary school:

(a) During 1943 and 1944 white students in the Wogamon zone were allowed to transfer out to other schools.

(b) In 1945 Wogamon became all black, with an all black staff and a black principal.

(c) The Wogamon student body remains 100% black and the staff remains majority black.

5. In 1919 the Dayton Board proposed to place black children in the basement of the Willard school with two black teachers. This proposal was not effectuated because of parent protest and the refusal of a black teacher to teach in the basement.

6. Between 1919 and 1935 white students in the Willard

zone were allowed to transfer to other schools and Willard became 100% black about 1935, at which time an all black staff and a black principal were assigned to the school. Willard remained all black until it was closed in 1962 and its zone absorbed by the McFarlane school.

7. The following facts pertain to the Dunbar High School:

(a) Dunbar opened in 1933 with an all black student enrollment, all black staff and a black principal.

(b) Unlike all other high schools in the Dayton system, Dunbar had no attendance zone and attendance was voluntary.

(c) Black students attended Dunbar from all over the City of Dayton, many passing white high schools such as Stivers and Fairview in order to attend Dunbar.

(d) About 1949 black students were bused from Shawn Acres Children's Home a distance of 8-10 miles to Dunbar. This practice was discontinued as a result of protests by the NAACP.

(e) White students living in the immediate vicinity of Dunbar were allowed to attend other high schools such as Roosevelt, whose zone overlapped the Dunbar area.

(f) Dunbar was not allowed to participate in intercity athletics until the mid-1940's; Dunbar athletic teams played all black high schools from other cities in other states.

(g) In 1959 defendant French, as Superintendent of Dayton Schools, stated, "For all intents this school (Dunbar) has been a Negro school."

(h) In 1962 a new Dunbar High School was built in an all black residential area, and the old Dunbar school became McFarlane elementary school.

(i) The new Dunbar was given a geographic attendance zone and opened all black (students and staff). Dunbar remains 100% black.

7A. The following facts pertain to Roosevelt and Roth High Schools:

(a) Until about 1950 separate facilities, including separate swimming pools and separate locker room facilities, were maintained at Roosevelt for black and white students.

(b) Roth High School opened in 1959, acquiring part of the Roosevelt attendance area, with a capacity for approximately 1900 students but with an enrollment of only 662.

(c) The newly-created Roth zone included most of the white residental areas in the pre-1959 Roosevelt zone.

(d) Roosevelt's enrollment decreased by 644 students the year Roth opened.

(e) The year Roth opened (1959) the black enrollment at Roosevelt increased from approximately 60% to approximately 80%.

8. During the 1970-71 school year, 571 or 66% of the 873 black teachers in the Dayton system were assigned to the 20 over 90% black schools.

9. Not until 1951 did the Board of Education adopt a policy of assigning any black citizen to teach in white or mixed classrooms.

10. In 1954 of 162 non-traveling black teachers, 148 (91.4%) were assigned to five schools with all black pupil populations. Thereafter, the Board's policy continued, "to introduce Negro teachers gradually, into schools having mixed or white populations when there is evidence that such communities are ready to accept Negro teachers."

11. About 1951 the Board announced a policy, again for the first time, of introducing white teachers in schools having Negro population; on November 30, 1954, only 8 full or part-time white teachers, or 0.6% of the 1409 white teachers were in these situations. Defendant French at that time as Superintendent attributed such lack of success to the reluctance of white teachers to teach in the black schools; moreover, it was then the District's policy and so remained until the late 1960's, not to assign or reassign white teachers to black schools against their will. Even into the late 1960's white teachers often were not hired or refused employment or were assigned to predominately white schools in the District because of the availability of teacher openings in the suburban, all white schools, the personal beliefs and behavior of white applicants, and the policies and practices of the District.

12. Prior to 1968, the District employed 10 black assistant principals.

13. Prior to 1968, all 10 assistant principals were assigned to schools with 90% or more black pupils.

14. In 1970 there were 14 Negro principals.

15. In 1970 all Negro principals were assigned to schools with over 90% Negro pupil populations.

16. As of 1970 the District employed 496 Negro elementary school teachers. 435 or 87% of these teachers were assigned on a full-time basis to schools where the student body was more than 70% Negro.

The District employed 181 Negro high school teachers as of 1970; 86% were assigned on a full-time basis to schools where the student body was more than 92% Negro.

17. Of the 26 black counselors employed by the system as of 1970, 25 or 96.1% were assigned to schools where the student body was more than 92% black. There was but one Negro head coach in the system at Dunbar, 99.3% Negro. There was a Negro assistant coach at the Roth School which is 92.3% Negro; and the only other assistant coaches were at the Dunbar School.

18. Of the 1662 white teachers employed in 1970, only 234 or 14% were assigned on a full-time basis to schools serving pupil populations in which their race was in a minority.

19. Non-certified personnel and clerical staff were assigned in a similarly racial pattern.

20. During the 1967-68 school year substantial numbers of white faculty transferred from predominately black schools and were replaced primarily by black faculty.

21. After an H.E.W. compliance review, H.E.W. finding of non-compliance with Title VI, and agreement by Defendant Board entered into with H.E.W., teachers were reassigned to accomplish substantial faculty desegregation; but the racial pattern in the allocation of other staff, including non-certified personnel and clerical staff, persists.

22. In 1971-72 of 34,427 pupils in elementary schools, only 2,573 (7.5% of the total) attended schools which were less than 80% black or white, while 28,256 (82% of the total) attended schools which were more than 90% black or white.

23. Of the 14,929 black students in elementary schools, 12,520 were contained in 18 90% or more black schools with but 282 white students; and of the 19,495 white pupils in elementary schools, 15070 were contained in 23 schools more than 90% white with but 381 black pupils.

24. Of 52 elementary schools, 40 served pupil enrollments more than 90% black or 90% white; and while *only* 3 elementary schools even roughly approximated the system-wide racial mix, 25 contained pupil populations more than 99% black or 99% white.

25. This statistical pattern of similarly substantial duality in pupil assignments exists in the middle and high schools and has existed for as many years as there are records of the Dayton Public Schools.

26. In the Dayton area, black citizens have been contained in separate and distinct residential locations and their residential choices have been restricted on a racial basis by public and private discrimination.

This residential segregation is pervasive and long standing, the direct result of discriminatory action and inaction at all levels of government.

27. Despite defendant school authorities' continued awareness of the residential segregation, they constructed schools and imposed various student assignment policies and practices which incorporated this residential segregation and resulted in the substantial duality in pupil assignments described supra.

27A. Defendant school authorities, in cooperation with the Dayton Metropolitan Housing Authority, constructed and otherwise provided schools to serve pupil populations from public housing and war housing projects, which were segregated on a racial basis by official action; as a result of the operation of various school assignment policies or practices, the student body and staff of these schools were predominantly of the same race as the public housing and war housing projects.

28. Defendant school authorities, in cooperation with various segments of real estate industry, constructed or otherwise provided schools for the pupil populations from new subdivisions or developments which were racially exclusionary; as a result of various school assignment policies or practices, the student bodies and staff of these schools were predominently of the same race as the subdivision or developments.

29. From 1951 through the present school year, at a cost of 31.13 million dollars, 612 regular classrooms were constructed which opened with all or predominantly white pupil populations and predominantly white faculties and continue to serve all or predominantly white pupil populations. From 1966 to present, 145 similarly identifiable white classrooms were constructed at a cost of 10.1 million dollars. From 1951 through the present school year, at a cost of at least 9.72 million dollars, at least 242 regular classrooms were constructed which opened with all or predominantly black pupil

populations and predominantly black faculties, and continue to contain all or predominantly black pupil populations. From 1966 to present, 46 similarly identifiable black classrooms were constructed at a cost of 3.13 million dollars.

30. On a system-wide basis some predominantly black schools, like some predominantly white schools, have operated substantially under capacity. Over 7,000 pupil spaces have existed in such undercapacity black schools in the 1971-72 school year.

30A. At various times some predominantly black schools, like some predominantly white schools, have been substantially overcrowded. To accomodate such overcrowding new classroom space has been added to the overcrowded school rather than reassign the pupils to school predominantly of the opposite race. In the major instance where pupils (black) have been reassigned to opposite race schools (white) because of lack of sufficient space (caused by a fire) in a one-race school (black), the black children were reassigned to a virtually all black school for the 1971-72 school year; this reassignment resulted in the resegregation of the white schools to the extent black children were transferred out, as well as the creation of another virtually all black school.

31. With one exception, the few white children transferring to black schools under freedom of enrollment,

(a) no predominantly white residential area has been assigned or reassigned to a predominantly black school and

(b) no white child has been transported to a predominantly black school.

31A. Black pupils have been assigned, transported, otherwise transferred out of predominantly white schools, sometimes past or away from other predominantly white schools, to black schools.

31B. White pupils have been assigned, transported, otherwise transferred out of predominantly black schools, sometimes past or away from other black schools, to predominantly white schools.

32. Optional attendance areas were established, and are still maintained in at least eight instances, between pairs of schools which are substantially disproportionate in their pupil racial composition.

The effect of such optional zones has been,

(a) to allow whites to avoid attending blacker schools,

(b) to assign white pupils to the whiter schools,

(c) to assign black pupils to the blacker schools.

32A. Optional zones have been created and maintained in response to community sentiment.

32B. In 1971-72, 39 white students advantaged themselves of freedom of enrollment transfers: 9 transferred to black schools, while 30 transferred to white schools. In the 1971-72 school year 460 blacks advantaged themselves of freedom of enrollment transfers: 456 transferred to black schools. In previous years, any integration accomplished by operation of the policy, first established in 1969, was similarly one-way and in part segregatory: of the whites transported most transferred into whiter schools.

33. The average yearly operating cost of maintaining a pupil space in the Dayton Public Schools is $140.

33A. The average yearly cost of transporting a pupil in a coordinated, urban transportation system, like Dayton, approximates $50/year; in Dayton yearly transportation costs on buses owned by the District average roughly $50 per pupil.

34. Defendant school authorities have considered, adopted, and implemented a middle school policy for some schools in the system.

34A. This policy now effects approximately 20 schools by

reorganizing their structure from K-8 to K-5, 6-8. This provided the opportunity to reorganize both the feeder patterns and attendance areas for the twenty schools chosen.

34B. Defendant school authorities were made aware, by recommendations from a Title IV center consultant, that such reorganization provided an opportunity to accomplish desegregation.

34C. The board chose to implement the middle school policy so that pupil segregation was and is maintained in the schools effected.

35. Defendant school authorities have been made aware by recommendations and proposals from private citizen's groups, the defendant Ohio State Department of Education, and the policies adopted on December 8 by the prior board, of many opportunities to desegregate substantially the Dayton Public Schools but have chosen instead to build schools and impose various pupil assignment policies and practices in a fashion which resulted in the existing racial separation.

36. In 1965 the District reported that only one school was "so evenly distributed in its student body that it (could) be regarded as having neither a predominantly Negro or white student body."

37. Defendant school authorities are responsible for the assignment of teachers and pupils in the Dayton Public Schools.

38. In the 1957-58 school year only 4 Negro students were enrolled in Patterson Co-Operative High School, a vocational school with no attendance area.

39. White children in the Roth, Roosevelt, and Dunbar attendance areas attended Patterson Co-Op in substantial numbers, while the number of black students enrolled there, at least through 1963-64 school year, was no more than 18.

40. At least through the 1963-64 school year, black children were systematically excluded from the Patterson High

School and the effective exclusion of black pupils persisted for some time thereafter.

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B. PLAINTIFFS' FIRST ERRATUM ON REQUEST FOR ADMISSIONS

Please be advised that Request for Admission Number 32B, due to clerical error, is erroneous insofar as it reads ". . . . 456 transferred to black schools." Plaintiffs request that each defendant substitute ". . . . 456 transferred to white schools" in Request number 32B and admit same.

C. PLAINTIFFS' SECOND ERRATUM ON REQUEST FOR ADMISSIONS

Please be advised that Requests for Admissions 8, 12, 13, 14, 15, 16, 17 and 18, which deal with the assignment of faculty, principals and coaches, are in error due to clerical mistakes and discrepancies in the data provided. Plaintiffs request that each defendant substitute the following and admit same:

8. During the 1970-71 school year approximately 561, or 70% of the 806 black teachers in the Dayton school district were assigned to the 20 schools with over 90% black pupil populations.

12. In the 1968-69 school year the District employed 14 black assistant principals.

13. In the 1968-69 school year 9 of these 14 assistant principals were assigned to schools with 90% or more black pupil populations, while 3 were assigned to schools with pupil populations more than 90% white.

14. In the 1968-69 school year there were 13 Negro principals in the Dayton public schools.

15. In the 1968-69 school year 12 of these Negro principals were assigned to schools with over 90% black pupil populations,

while the other was assigned to a school with a 57.1% Negro pupil population.

16. In the 1968-69 school year the District employed approximately 534 black elementary teachers; about 433 or 81% were assigned on a full-time basis to schools where the student body was more than 90% Negro.

17. In the 1968-69 school year of the 25 black counselors employed by the system, 25 or 100% were assigned to schools where the student body was predominantly black. In the 1967-68 school year of 19 black high school coaches only one was assigned to a school with a pupil population less than 87.5% black.

18. Of the approximately 1847 full-time white teachers employed in the 1968-69 school year, only about 142 or 8% were assigned to schools serving pupil populations 90% or more black.

D. ANSWERS OF DEFENDANT DAYTON BOARD TO REQUEST FOR ADMISSIONS

Defendants Dayton Board of Education, Josephine Groff, James D. Hart and William E. Goodwin, by their attorneys, answer the plaintiffs' request for admissions as follows:

1. Admit that in 1918 the Dayton Board assigned four (4) black teachers to a frame two-story house which was converted to a school building; admit that this building was attended by blacks; admit that this building was located behind the brick Garfield school building; admit that only black teachers were assigned to the frame structure; admit that all white teachers taught in the brick building; say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

2. (a) Deny requested admission but admit that on April 30, 1925 a mandamus action was filed by Earl Reese in

the Court of Appeals for Montgomery County. This action was entitled *State of Ohio, ex rel. Earl Reese* v. *The Dayton Board of Education*, Case No. 670. Said defendants admit that in a decision entered of record on December 24, 1925, the Court of Appeals in ordering a writ of mandamus commanding the defendant to admit children of colored race upon equal terms with white children in the Garfield school district, found that "separate classes were maintained for colored pupils and that those classes met in a different building from the building in which classes of white pupils met." Said defendants say that the defendant in said action filed a demurrer and that the appellate decision overruling the demurrer was appealed to the Supreme Court of Ohio. The Supreme Court, in *Board of Education of School District of Dayton* v. *State*, 114 Ohio St. 188 (1926) affirmed the appellate decision overruling the demurrer.

(b) Admits that after 1926 black children attended integrated classes at Garfield; admit that black teachers taught in frame building behind the brick school; say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

(c) Say that they are without information as to this request for admission and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

(d) Admit that white students as well as all other students, regardless of race, who lived in the Garfield attendance area, were for good cause allowed to transfer to other schools during the 1930's; admit that Garfield became predominantly black in student enrollment and that about 1936 an all black faculty was assigned to the Garfield school, say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

(e) Admit that Garfield remained predominantly black after 1936; admit that during the period of 1947-52 Garfield was all black; say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

(f) Admit.

3. Admit with modification that student enrollment in McFarlane in 1971-72 was 99.5% black.

(4) (a) Admit with the modification that white students, as well as other students, regardless of race, were allowed to transfer from the Wogaman zone for good cause.

(b) Admit that in 1945 Wogaman had an all black staff and a black principal. Deny that Wogaman was all black but admit that it was predominantly black.

(c) Deny that the student body at Wogaman remained 100% black from 1945 to the present; admit that in October, 1972 the Wogaman student body was 100% black; deny that majority of the Wogaman staff remained black during the period of 1945 to October of 1972.

5. Say that they are without information as to this request for admission and that the information known or readily obtainable is insufficient to enable them to admit or deny such request.

6. Admits that in about 1935 an all black staff and a black principal were assigned to Willard, admit that white students as well as other students, regardless of race, for good cause were allowed to transfer to other schools; admit that Willard became predominantly black in 1935; admit that from the period of time from 1947-52 Willard was all black; admit that the remaining zone of the Willard area was absorbed by the McFarlane school; say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

7. (a) Admit with the modification that Dunbar opened as a junior high school, grades 7, 8 and 9 and that in 1934 this school was expanded to include grades 10 and 11 and thereafter became a full high school.

(b) Deny but admit that after 1940 Dunbar and Patterson Co-Operative were the only high schools that had no specific attendance zones with attendance being optional at both of these schools.

(c) Admit that black students attended Dunbar; say that they are without information as to the remaining requests for admissions and that the information known or readily obtainable is insufficient to enable them to admit or deny such requests.

(d) Admit that black 7th and 8th graders were transported from Shawen Acres to Dunbar but state that this policy terminated as of 1950. Deny the remaining requests for admissions.

(e) Deny this request for admission. Dunbar was an optional school and had no attendance zone until 1962.

(f) Admit but state that since 1947 Dunbar engaged in all inter-city athletic events.

(g) Admit but in same correspondence Mr. French states that Dunbar was given no boundary lines and attendance was voluntary.

(h) Admit with the modification that the Dunbar High School was built in a predominatly all black residential area. Said defendants further admit that the N.A.A.C.P. approved the location of the new Dunbar High School.

(i) Admit that in 1962 the new Dunbar was given a geographic attendance zone; deny that this school opened

with an all black student body; deny that Dunbar had a 100% Negro student body from 1962 to present but admit the student body became 100% black in 1971-72; deny that the staff of Dunbar was 100% black from 1962 to present.

7A. (a) Admit.

(b) Admit with modification that enrollment in 1959 included no seniors and that capacity was approximately 1,800 students.

(c) Deny but admit that new Roth included some of the white residential areas in the pre-1959 Roosevelt zone.

(d) Deny but admit that enrollment of Roosevelt decreased by 608 students the year Roth opened.

(e) Say that they are without information as to this request and the information known or readily obtainable is insufficient to admit or deny such requests.

8. Admit corrected request.

9. Admit.

10. Admit that in 1954 of 162 non-traveling black teachers 148 (91.4%) were assigned to five schools with all black pupil populations. Admit that the statement quoted in this request for admissions was the policy of the board in 1954 but deny that this policy continued from that time to the present as inferred in the request.

11. Admit that on November 30, 1954, only 8 full or part-time teachers 1 or 0.6% of the 1409 white were employed in schools having predominantly Negro student population. Admit that in 1954 Superintendent French attributed lack of success to reluctance of white teachers to teach in black schools. Admit that until the late 1960's the policy of the Dayton Board was not to assign or reassign white teachers to black schools against their will. Deny all the remaining requests for admission.

12. Admit corrected request.

13. Admit corrected request.

14. Admit corrected request but for the years 1970-71 as originally requested there were 18 Negro principals.

15. Admit corrected request but for the years 1970-71 as originally requested there were four Negro principals in schools with over 90% white pupil population and one Negro principal assigned to a school with 57.1% Negro pupil population.

16. Admit corrected request but for year 1970-71 as originally requested the District employed 583 Negro elementary teachers. About 385 or approximately 66% were assigned on a full-time basis to schools where the student body was more than 90% Negro.

17. Admit corrected request but admit that of the 36 black counselors employed by system as of 1971-72, twelve or 33 1/3% were assigned to school where the student body was predominantly black. In the 1971-72 school year of the 52 black high school coaches 28 were assigned to schools with less than 50% black student bodies.

18. Admit corrected request but state that of the approximately 1588 white teachers employed in the year 1971-72 32% were assigned on a full-time basis to schools serving pupil population in which their race was in a minority.

19. Deny.

20. Deny.

21. Deny but admit that an HEW compliance review was conducted resulting in a letter from HEW indicating probably non-compliance as to teaching assignment. The Dayton Board voluntarily agreed to reassign the teaching staff in order that the teaching staff throughout the district would have a racial composition that reflects the total staff of the district as a whole.

22. Deny the requested admission but admit that in 1971-72 of the 34,424 pupils in the elementary schools, excepting middle schools, only 2,573 (7.5% of the total) attended schools which were less than 80% black or white while 26,505 (77%) of the total attended schools which were more than 90% black or white.

23. Deny the requested admission but admit that in 1971-72 of the 14,443 black students in elementary schools, other than middle schools, 11,365 were contained in 16 schools that were 78.7% or more black, with but 145 white students in these schools; and of the 19,981 white pupils in elementary schools, 14,168 were contained in 23 schools that were more than 90% white, with but 320 black pupils in these schools.

24. Deny the request admission but admit that in 1971-72 of the 52 elementary schools, not including middle schools, 40 served pupil enrollment of more than 90% black or 90% white while only three elementary schools approximated the systemwide racial mix and that 28 schools contained pupil population more than 99% black or 99% white.

25. Deny.

26. Deny.

27. Deny.

27A. Deny.

28. Deny.

29. Deny the requested admission but admit the following.

(a) From January 1966 to September 1967, thirty classrooms which contained all or predominantly black pupil populations were constructed at a cost of $988,511;

(b) From September 1967 to the present, seventeen classrooms which contained all or predominantly black pupil populations were constructed at a cost of $1,124,206 of which fourteen classrooms were replacement for classrooms destroyed by fire at Edison at a cost of $899,928;

(c) From January, 1966 to September, 1969, two hundred and fourteen classrooms which contained predominantly white pupil population were constructed at a cost of $9.73 million but of these two hundred fourteen classrooms 76 were added to buildings that are currently 30% or more black population. Further, 16 classrooms were replacement for rooms destroyed by the fire at Ruskin elementary.

(d) From September, 1967 to the present, twenty-three (23) classrooms which contained predominantly white pupil population were constructed at a cost of 1.44 million dollars.

30. Deny but admit that there were some predominantly white and some predominantly black schools that have operated under capacity at one time or another. Admit that in 1971-72 there were over 7,000 pupil spaces in black schools also white schools. Said defendants say that the capacity figures for 1971-72 were based on safety code factors per square foot per person and did not take into consideration the education facility and methods of teaching and subject matter taught in the classrooms.

30A. Deny but do admit that some predominantly black schools as well as some predominantly white schools have been overcrowded at various times and admit that new classroom space has been added at some schools that were overcrowded.

31.

(a) Deny.

(b) Admit as substantially correct.

31A. Deny this request for admisison with the following exceptions:

(a) That black students were transported from Shawen Acres past white schools prior to June, 1954 but that this practice stopped in 1954;

(b) That some black students were transferred from Stiv-

ers in 1970 to Roth and Roosevelt as an emergency measure but these students were reassigned the following year.

31B. Deny this request for admission with the following exceptions:

(a) Some white students were reassigned from Roth in 1969 for emergency reasons but were returned to Roth the following year.

(b) A minimal number of white students may have been included in the transfer of students from Jefferson in 1969-70 and 1970-71. However, Jefferson was predominantly black during these years and all the students in a class from Jefferson were assigned by class to predominantly white schools. The effect of these transfers was to provide integration at the receiving schools.

32. Deny the request for admission but admit that eight option attendance areas are presently in existence.

32A. Deny. However said defendants admit that members of the community have in the past expressed their desires for the establishment of optional areas but that the decision for the creation and maintenance of such areas are governed by the following factors:

1. Capacity of school building
2. Accessibility and distance
3. Traffic hazards.

32B. Admit that in 1971-72, 39 white students transferred under the Freedom of Enrollment program that 9 of these transferred to black schools and 30 to white schools. Admit that 460 blacks transferred under the Freedom of Enrollment program and that 456 of these black students transferred to white schools. Deny the remaining request for admissions.

33. Admit.

33A. Admit as substantially in accordance with transportation studies conducted by the defendant Dayton Board.

34. Admit.

34A. Admit.

34B. Admit.

34C. Deny.

35. Deny.

36. Admit.

37. Admit.

38. Say that they are without information as to this request and that the information known or readily obtainable is insufficient to admit or deny such request but admit that in 1951-52 there were 8 black students at Patterson and that in 1963-64 there were 19 black students.

39. Deny.

40. Deny.

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E. ANSWERS OF DEFENDANT WAYNE M. CARLE TO REQUEST FOR ADMISSIONS

Defendant, Wayne M. Carle, by his attorney Asher Bogin, answers and objects to the requests for admissions served on him by plaintiff, as follows:

1. Admits

2a. Admits

2b. Admits

2c. Admits

2d. Admits. With regard to faculty assignment the school directory for 1935-36 shows the faculty to be composed of 7 white and 8 black teachers. For 1936-37, the Garfield faculty was 15 black members.

2e. Admits. Specifically, for the years 1947-48 through 1951-52 the enrollment is shown as 100 per cent black.

2f. Admits.

3. Admits. The McFarlane enrollment in 1963 was 99.6% black and in 1971-72 99.5% black.

4a. Admits.

4b. Admits.

4c. Admits except that the enrollment at Wogaman in October 1972 is 100 per cent black and the faculty consists of 21.8 white teachers and 21.6 black teachers or 49.8 per cent black.

5. Admits

6. Admits

7a. Admits. The faculty in 1934-35 consisted of 19 black and 0 white teachers and a black principal.

7b. Admits.

7c. Admits.

7d. Admits, with the exception that the distance was 3 to 4 miles.

7e. Admits.

7f. Admits.

7g Admits.

7h. Admits.

7i. Admits, with the exception that the enrollment in 1963 is shown as 92.7 per cent black. In 1972-73 it is 100 per cent black.

7A(a) Admits.

7A(b) Admits. The enrollment of 662 in 1959 included no seniors. The following year the enrollment was 816, of whom 84 were 8th graders.

7A(c) Admits.

7A(d) Admits.

7A(e) Says that he does not at this time know whether the facts stated in the Request are correct.

8. Admits corrected Request.

9. Admits.

10. Admits.

11. Admits.

12. Admits corrected Request, with exception that the number of black assistant principals was 15, not 14, as of August 19, 1968.

13. Admits corrected Request, with the exception that of the 15 black assistant principals, 11 were in schools 90 per cent or more black and two were in schools 90 per cent or more white.

14. Admits corrected Request.

15. Admits corrected Request.

16. Admits corrected Request.

17. Admits corrected Request.

18. Says that of the approximately 1847 full time white teachers employed in the 1968-69 school year, about 172 or 9.3% were assigned to schools serving pupil populations 90% or more black.

19. Admits.

20. Admits.

21. Admits that the Office for Civil Rights on March 17, 1969 wrote, "We have completed our analysis of the information gathered during the review and have made the determination that your district is not com-

plying with Title VI of the Civil Rights Act of 1964." and admits the balance of Request No. 21.

22. Admits as substantially correct for elementary, other than middle, schools.

23. Admits as substantially correct for elementary, other than middle, schools.

24. Admits, with the exception that 28, not 25, contain pupil populations more than 99 per cent black or 99 per cent white.

25. Admits.

26. Admits.

27. Admits.

27A. Admits.

28. Admits.

29. Admits as substantially in accordance with the compilation of 1520 classrooms tabulated at a cost of $57,608,482 for the period 1948-1968.

30. Admits.

30A. Admits. The instances cited refer to the reassignment of pupils from Edison School to several perimeter schools and from Jefferson School to other perimeter schools, that were returned to Jefferson, Edison and MacFarlane, all black schools. The word "creation" should be "expansion" in the last sentence.

31 (a) Admits as at least substantially correct.

31 (b) Admits as at least substantially correct.

31A. Admits.

31B. Admits.

32. Admits, to the best of his knowledge.

32A. Admits.

32B. Admits corrected Request, with the change of the word "transported" to "transferred" in the last sentence.

33. Admits.

33A. Admits as in substantial agreement with annual transportation studies since 1968.

34. Admits.

34A. Admits.

34B. Admits.

34C. Admits that the manner in which the middle school policy was implemented by the Board has resulted in substantial continuation of pupil segregation in the schools affected.

35. Admits.

36. Admits.

37. Admits.

38. Admits.

39. Admits.

40. Admits. Not until 1968 was a policy developed to assure entrance of students from all elementary schools.

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F. ANSWERS OF DEFENDANT JANE STERZER TO REQUEST FOR ADMISSIONS

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Defendant, Jane Sterzer by her attorney, Asher Bogin, answers and objects to the Requests for Admissions served on her by plaintiff as follows:

This defendant says that she has searched her recollection and has made inquiry of Dr. Wayne Carle, Superintendent of the Dayton schools, and that she is in accord with the Answers to the plaintiff's Requests filed herein by Dr. Carle.

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VII. RELEVENT PARTS OF THE RECORD OF THE TWENTY VOLUMES TRANSCRIBED DURING THE VIOLATION HEARING HELD IN DISTRICT COURT IN NOVEMBER AND DECEMBER OF 1972 (R. I.).

A. TESTIMONY OF HUBERT D. POORE.

1. Commentary of Trial Court and plaintiffs' counsel.

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[R. I. 148, Vol. 2] MR. DIAMOND: Your Honor, let me make two points clear. First of all, in at least – there are four project applications. In at least three of them there is a statement by the DMHA of the availability of space and the accommodation of nearby schools, schools in the area, or the need for new school capacity to serve these projects.

Earlier in the day I introduced into evidence and read to your Honor the statements by the Dayton School Authorities in relationship to other projects in those instances, not necessarily related to these four particular projects, of their creation of new schools and classrooms to serve the pupils of these populations of these projects.

THE COURT: Mr. Diamond, I am aware that for a substantial period of time so-called public housing, financed by agencies of both the Federal Government and local Government, were specifically designated, some were white and some were black. This is insufficient for our purposes.

If you wish to present this evidence as to these projects, I

am sure that it will state therein for whom the occupancy was intended.

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[R. I. 160, Vol. 2] [The Court] Mr. Diamond, you simply have not passed the first hurdle with this witness, and until and unless you do the Court is going to rule that this is not admissible.

Now, if you have a necessity with this witness and other witnesses demonstrating some participation by the school board, unless that participation in the determination of the character, the occupancy of these projects, until that is established I am going to hold he may not testify.

MR. DIAMOND: Well, I guess what I am having difficulty understanding, Your Honor, is that in terms of a lease agreement the school authorities are the ones that made the lease.

THE COURT: There is no question about that.

MR. DIAMOND: They are the ones who said we are going to lease that space and make it either a black school or a white school.

THE COURT: Well –

MR. DIAMOND: They are the ones who made the agreement.

THE COURT: Mr. Diamond, until you can establish that the School Board participated in some fashion with the original determination that this would be a white or black project, whatever else the Board might have done, they have taken the area as they found it. • • •

[R. I. 202-203, Vol. 3] MR. DIAMOND: Well, Your Honor, what I was going to show through this witness is that he is a parent of a child, he had a family when he moved here, and I was going to ask him from his recollection about specific incidents relating to his school children and neighbors.

THE COURT: This witness has been called as an expert to testify as to policies and I have permitted that. I am not

going to permit his testimony as to individual recollections going on 27 years ago.

You may be seated, Mr. Greer.

MR. DIAMOND: Your Honor, Mr. Poore would testify to the fact that there were white children transported from the Wogaman School attendance area to the Jackson School attendance area in the 1945 school year.

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2. Poore testimony.

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[R. I. 152, Vol. 2] "Question: Mr. Poore, what do those four applications represent in terms of the racial identification, first of all, of the projects? Let's take particularly the DeSoto Bass project where you were located in 1945 when you came on."

A. Well, the proposed Metropolitan Housing Plan, it says the project proposed for race or national group was Negro; and this project, in addition to the present, Negro occupied, which was OH-52, which we had 200 units already there.

Q. Now, to your knowledge, Mr. Poore, while you were at the DeSoto Bass project, were your projects – while you were at DeSoto Bass, were they used for School purposes?

A. Yes, they were.

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[R. I. 156, Vol. 2] Q. With reference to the other project applications in addition to this DeSota, do they show the intended racial occupancy of the project?

A. Yes, they do.

Q. And could you in each instance describe what the intended racial occupancy was?

A. Summit Court is for white; Edgewood Court was for white; and Parkside Homes was for white.

Q. With reference to Edgewood and Summit, do those

documents reveal the racial composition of the particular spot upon which the project was to be located and from which people would have to be removed?

A. Yes, it did.

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[R. I. 183, Vol. 3] A. 143D is surveys of the colored population of Dayton; there is the colored population, the census, and the number of units in DeSoto Bass Court and the temporary housing, which was known as War housing.

For instance, there was 200 for the DeSoto Bass Courts, but the addition of 200 was for the temporary addition. 60 for the second addition to DeSoto Bass Courts, 160 of the Homeview Courts, and 80 for Lakeview, 50 for the dormitory at Phyllis Wheatley and 100 additional dormitory for girls.

Q. Were all these projects designated for black occupancy?

A. Those were designated for black.

• • •

[R. I. 184-186, Vol. 3] A. G? This is data on the War housing application for the past six months, which is dated November 5, 1945. It gives the number of white applications, excluding Vandalia, and then it gives the number of applications for the Vandalia area, the number of Negro applications.

Q. Why is it divided into those three columns?

A. Well, all the white applications except Vandalia were filed in an office downtown, and the black applications were all filed at the DeSoto Bass Courts, and Vandalia homes, which was located in Vandalia, that they made application there.

Q. Was Vandalia homes a white project?

A. Yes, it was.

Q. I have marked for identification Plaintiffs' Exhibit 143H, which is an application for transfer. Could you describe what that is about?

A. This is an application transfer project known as OH-33155 which is 200 units and OH-33234, both of which were located in DeSoto Bass Courts and they were built for war

housing and for families of the veterans when they returned, but they were owned by the Federal Government and the Federal Government transferred them to the Dayton Metropolitan Housing Authority for low-income families.

Q. In other words they were owned originally by the Federal Government and then transferred to you?

A. That's right.

Q. At approximately what time did these two particular projects transfer to your ownership?

A. It was approximately about 1950.

Q. And they were designated for black occupancy?

A. Yes, they were.

Q. Now, Your Honor, I also have marked for identification a series of letters marked Plaintiffs' Exhibits 143J, a collective exhibit, and these are various letters and leases. Would you describe generally what the leases and letters are about?

A. Well, these letters are from the Board of Education to lease space in our project for classes as they did not have space in the school at that time.

Q. Now, what Boards of Education did you enter into lease agreements with?

A. Well, we had one with the Mad River Township.

[R. I. 187-188, Vol. 3] Q. Does PX-143J include lease agreements with the Dayton Board of Education?

A. Yes, it does.

Q. And were lease agreements made for space in the DeSoto Bass and the McGuffey Homes?

A. Yes, it does.

Q. Now, what was the racial designation of the McGuffey Homes?

A. It was white.

Q. And DeSoto Bass?

A. Black.

Q. Now, when you were — was it Executive Director of the DeSoto Bass Courts?

A. I was Project Manager.

Q. Project Manager, excuse me. I am sorry. I got the language wrong.

Q. When you were project manager at the DeSoto Bass Courts, when these lease agreements were in effect, were black pupils and black faculty assigned to that leased space?

A. Yes, there was.

• • •

[R. I. 213-215, Vol. 3] Q. Mr. Poore during the period of these lease agreements with the DMHA to use the building for school purposes, the DMHA didn't control or influence the assignment of pupils or faculty, did they?

A. No, they did not.

Q. That was within the control of the Dayton School Authorities?

A. That's right.

Q. On the lease agreement that Mr. Greer just referred to, did you find a copy of that?

A. Yes, I found a copy.

Q. And what form is that? Does it have a form number on it at the very top?

A. That's SP1913.

Q. And would you read the first line of that, the underlined portion of the heading of the lease agreement?

A. At the very top, you mean?

Q. Yes.

A. "Lease or tenant activity and other non-commercial use on Federal War Housing Projects by Federal local authorities."

Q. And is that a form by either the Federal or State authorities? I am speaking of the Federal Housing Authority.

A. I would say it is probably Federal. I am not for certain.

Q. And at that time War housing was required to be segregated on a racial basis?

A. Yes, it was.

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B. TESTIMONY OF HOMER ROYER.

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[R. I. 229, Vol. 3] Q. Do you recall telling the HEW team that investigated the school system that one of the reasons for putting black teachers on substitute status at first was because of the questionable nature of some of their qualifications because of graduation from southern institutions?

A. I don't remember making that statement. I may have made it.

Q. Would it be true?

A. There would be some institutions about which we had little information.

[R. I. 293, Vol. 4] Q. In your opinion, based upon your experience in this area, did the placing of white or black teachers one way or another in the school system have anything to do with parts of the Dayton community becoming black or white?

A. Comparatively little, I should think. I presume some people fled from a community because of approaching integration, but I don't think assignment of staff was a basic decision in that regard.

Q. And to what do you attribute the changes in communities?

A. Well, of course, we discussed many, many times the matter of housing, which is such a difficult one for everybody to solve, was the important factor in the change in communities. I don't know if that is a part of this court case discussion or not.

Q. Did the composition of the student bodies in the various schools in the Dayton System reflect, in your opinion, anything other than the composition of the neighborhoods in which those schools were located?

A. That was basically what they reflected I would assume.

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C. TESTIMONY OF PHYLLIS B. GREER.

[R. I. 344-348, Vol. 4] Q. State your full name and occupation, please?

A. Phyllis B. Greer, School Community Services, Dayton Board of Education.

Q. Mrs. Greer, how long have you been a resident of Dayton?

A. All my life.

Q. You attended public schools in Dayton?

A. Yes, I did.

Q. Where did you first go to school?

A. I first went to school at Weaver Elementary School.

Q. I hesitate to ask you this, but could you tell me the year, Mrs. Greer?

A. Yes, 1923-'24 was my first year in kindergarten.

Q. And that was at Weaver, correct?

A. Yes.

Q. What was the racial composition at Weaver at that time?

A. There were relatively few black children at Weaver at that time.

Q. And what school did you attend after you left Weaver?

A. I went to Roosevelt High School in the seventh, eighth, and ninth year and to Dunbar High School in the tenth, eleventh and twelfth.

Q. Would you give me the rest of your educational background?

A. Yes. After graduating from Dunbar High School, I went to Wilburforce University and earned a BS Degree, came back to Dunbar High School and taught until 1945-'46, was out on maternity leave two years, went to Willard School and taught there until 1958 when I became principal of Carlson Elementary School and went from Carlson Elementary School to supervise the office of EEO at the Dayton Board of Education.

Q. Excuse me. What is the office of EEO?

A. Equal Educational Opportunity which was a title for office.

Q. And after that?

A. After that I began work on school community services.

Q. What did you teach when you were assigned at Dunbar?

A. English.

Q. And at Willard?

A. I taught the fourth, fifth and sixth grades periodically during that time, not all the same year.

Q. And then you were principal at Carlson; is that correct?

A. That's correct.

Q. Is the VA Hospital in the Carlson area?

A. Yes.

Q. Can you pinpoint the years you were at Carlson?

A. From 1958 to the end of the year 1969. I went to the Board of Education in September of 1969.

Q. O. K. The children of the staff at the VA Hospital, were they white or black?

A. Most of them were white. I didn't know of any black youngsters who lived on the VA grounds.

Q. They have residents actually on the grounds themselves of the hospital?

A. Yes, I think they were the children of the doctors and other professionals there.

Q. They were in the Carlson Elementary zone. Is Carlson a school with a substantial black enrollment?

A. When I went to Carlson, the enrollment was approximately 213. There were a few whites there but they were substantially all black students at Carlson.

Q. And that would be 1958?

A. That's correct.

Q. And do you know where the white children from the VA Hospital site went to school?

A. They did not go to Carlson. Some of them went to Jackson Elementary School. I don't know where the others went.

Q. Was Jackson a black or white school at that time?

A. Jackson School at that time was predominantly white.

Q. Do you know how they got to the Jackson School?

A. No.

Q. Did they walk?

A. After my initial years there, there was one doctor who chose to send his kindergarten child to Carlson, and from him I learned the children went by a blue bus to the other schools.

Q. Did any of those children to your knowledge go to Residence Park at the time when it was black?

A. This is what I have heard.

Q. You don't know that?

A. No, I don't know that.

Q. You do know about the Jackson School?

A. Yes.

Q. Are you familiar with Shawn Acres? Can you tell us what it is?

A. Shawn Acres is a children's home, a home for parentless children, orphans.

Q. Does it have both black and white children?

A. Yes.

Q. Do you know where it is, what school zone it is located in?

A. It is on North Main Street.

Q. Has it always been there or was it located somewhere else?

A. In the very early years it was on Summit Street, on South Summit. It moved then to North Main.

Q. Do you have any idea when it moved?

A. Well, I remember that in the '30's youngsters were being bussed from Shawn Acres to Garfield School, so it would have to have been prior to that time, sometime prior to that.

Q. And the youngsters who were being bussed to the Garfield School, were they black or white?

A. They were all black.

Q. And was the Garfield School a black school or white school?

A. Black.

Q. Do you know what school they would have attended had they attended the school zone in which the school was located?

A. No, I don't remember the closest school to Shawn Acres.

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[R. I. 476, Vol. 5] Q. Now, when your testimony ended, I believe you were at the map showing the Judge where the Garfield School was with relationship to the transportation of Shawn Acres.

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Q. What was Shawn Acres?

A. Shawn Acres was a Children's Home.

Q. And did it have both black and white pupils?

A. Yes.

Q. Now, could you step to the map with the Court's permission and show the Court where the black pupils went to school?

A. Yes.

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THE WITNESS: Shawn Acres is located up in the area of Loos School and the students from Shawn Acres were bussed to Garfield School which is three blocks from McFarlane School on Fifth Street.

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[R. I. 479-480 Vol. 5] Q. Could you answer the question, Mrs. Greer?

A. As a second grade student at Weaver School, I was tried out for a Christmas play and my teacher wanted me to take the part of an angel and the teacher who was in charge

of the play indicated that I could not be an angel in the play because there were no colored angels. During my third year of school, I remember that I was called to the platform, the little low platform in the front of the classroom and the rest of the class was told that to look at Phyllis Blackburn's hair. It was braided and had ribbons on it and she would like for them to come to school with their hair like this rather than with the knots and bed lint in it, and of course, as I went home that day I had a little difficulty with the black children who had knots and bed lint.

We were told that as we went to school preparatory to going – signing our election blanks, we were counseled, and this happened at Roosevelt, we were counseled to go into the college preparatory courses were useless for the Negro students because there were not the job opportunities and not the places that we could use a college preparatory course and should then rather take the general course.

Q. Now, did you attend the Weaver School through the eighth grade?

A. No. I attended Weaver School kindergarten through sixth and I attended Roosevelt High School, seventh, eighth and ninth. I attended Dunbar High School from ten through twelve.

Q. Why did you move, transfer from Roosevelt High School to the Dunbar High School?

A. I transferred from Roosevelt High School to Dunbar High School because my family felt that there were practices that were in evidence at Roosevelt –

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[R. I. 481-494, Vol. 5] A. (Continuing.) I was a student at Roosevelt those three years prior. Blacks were not allowed to go into the swimming pools, blacks had separate showers, so we requested from our parents to be allowed to go to Dunbar.

One of the assistant principals at Roosevelt at that time came to our home and asked that we not be permitted to go to Dunbar because they wanted all the nice colored children to stay at Roosevelt, but we did go to Dunbar.

Q. And why did you go to Dunbar?

A. I went to Dunbar because I felt that if there was going to be – if we were going to be separated by anything, we might as well be separated by an entire building as to be separated by practices.

In fact, when I went to an eighth grade social studies class I was told by a teacher, whose name I still remember, I won't quote it but if I am asked to I will, that even though I was a good student I was not to sit in the front of the class because most of the colored kids sat in the back.

Q. Now, Mrs. Greer, while you were at the Dunbar High School, in terms of a separate building, were there other types of separation from the rest of the school system?

A. Well, when I went there in 1933, and certainly when I graduated in 1936 and when I went back to teaching in 1940, our athletic teams did not compete with the white schools in the city. Our athletic teams competed with other schools out of the state, even, that were black.

Q. Now, when you first – after you finished college – where did you go to college?

A. I went to Wilburforce University from '36 to '40.

Q. And when you returned to the Dayton Public Schools where were you assigned?

A. Dunbar High School.

Q. And at the time of your assignment were there any black teachers teaching white pupils?

A. No.

Q. And how long did you remain at Dunbar?

A. I remained at Dunbar from '40 to '45.

Q. Now, during that period of time, around 1945, are you personally aware of the faculty assignment that took place at the Wogaman School?

A. Yes, I am.

Q. What was that?

A. When school closed in June of 1945, there was an entire white staff at Wogaman. When school opened in September of '45, there was an entire black staff at Wogaman under a black principal, Robert Braxton.

Q. And at the same time were white pupils who lived in the Wogaman area transferred by bus out of the Wogaman School?

A. Yes.

Q. And where did they attend school?

A. They attended Jackson School.

Q. So that in the 1945 school year, '45-'46 school year, Wogaman had an all-black staff and all-black pupil population?

A. Yes.

Q. Now, while you were at Dunbar were black youngsters ever transferred there from Roosevelt?

A. Yes. I taught several black youngsters who had been behavior problems at Roosevelt and their parents, upon enrolling them in the school, –

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Q. Would you state –

A. The disruptive black students from Roosevelt were assigned to Dunbar.

Q. And, to your knowledge, were any of these disruptive black students assigned to any other high school in the system?

A. Not to my knowledge. I could not verify that or deny it.

Q. Now, when did you leave the Dunbar School as a faculty member?

A. I left Dunbar School on maternity leave in '46.

Q. And what happened after you returned from your maternity leave?

A. We had to have two years. When I went back and asked to get the job – I was told when I left that the teacher assigned to teach English in my place would be on a permanent substitute basis. When I went back the teacher had

been assigned as a regular classroom teacher. I was told that there were no English spots in Dunbar, there were no French classes in Dunbar that I could fill in, and was asked to go to Willard School to teach on a temporary certificate until there was an opening at Dunbar in English or French.

Q. And at that time you had a high school certificate in English?

A. Yes.

Q. And French?

A. Yes.

THE COURT: Excuse me. Mrs. Greer, how long had you taught at that point?

THE WITNESS: I had taught from '40 to '49.

THE COURT: Didn't you have tenure?

THE WITNESS: Yes, but I was not really assigned to the school in which I – I was given a job. I was assured a job.

THE COURT: All right. Thank you.

BY MR. DIAMOND:

Q. And you were assigned to what school?

A. Willard.

Q. And that was in an elementary capacity?

A. Yes.

Q. And what grades did you teach at that school?

A. I had a fourth year class of students who – they had taken an overflow of students from DeSoto Bass Courts, who came from DeSoto Bass to Willard to school. There was an overflow at that time from DeSoto Bass and those youngsters were – one of those classes was the class I taught at Willard.

Q. What schools was the Willard School closest to?

A. At that point in time, I am not sure because Miami Chapel had not been built. It was the closest school at that point in time to Wogaman, but there were other schools equal distance or closer, one school.

Q. All right. Thank you.

Now, Mrs. Greer, have you on various occasions both for HEW investigations and for investigations by Dr. Carle, and

on requests by Plaintiffs examined the faculty directories from your own personal knowledge?

A. Yes. I was asked to do that by Title 6 Office the first time.

Q. At that point in time what was your position in the school system?

A. I was working at that point in time with the Office of EEO, the final months of the Office of EEO.

Q. And from your examination of these faculty directories, can you state from the beginning and describe the pattern of faculty assignments?

A. Yes. The first directory that was available is a 1921-22 directory. At that point in time there were seven black teachers in the Dayton School District. All of these teachers were assigned at Garfield.

From '31 to – from '21 to '31 the number had grown to 10 black teachers.

Q. And where were they assigned?

A. They were at Garfield and one black teacher, other than Garfield, a teacher, Maude Walker, was assigned to Weaver but she had an un-graded class and she had an ungraded class of all black boys.

Then in 1933 there was then again the largest number of blacks hired and these teachers were hired as staff people for Dunbar High School.

In 1950 or '51 a teacher was assigned, a black teacher was assigned to Weaver School.

In 1955 two black teachers were assigned to Jackson School.

Q. Now, let me interrupt you one moment. You have testified about the racial change both in terms of pupils and teachers at the Wogaman School.

Now, could you describe for me the racial change in teachers at the Garfield and Willard Schools in the mid-1930's?

A. In 1934-35 these directories show there were 10 black teachers and six whites at Willard School. And then in '35-'36 that staff became all black.

The next year, '36-37, there were roughly 38 percent white teachers at Garfield and –

THE COURT: I am sorry. What –

THE WITNESS: '35-36.

THE COURT: Excuse me. 38 percent white teachers?

THE WITNESS: There were 38 percent black teachers.

THE COURT: Black. Thank you.

A. And then the year '35-36, that staff became all black.

Q. And during those same periods of time did the pupil populations become all black?

A. Yes.

Q. At these two schools?

A. Yes.

Q. Fine. Now, could you continue through? We were at 1951 and we had teachers assigned to Jackson in terms of black teachers assigned to the Jackson School.

A. Yes. There was from that time on gradual assignments of black teachers in schools that had some white students in them. However, in going through our directories we found that these black teachers were assigned to schools that were already becoming black as far as the elementary grades are concerned.

I think that we were able to substantiate that in 1955 a black teacher was assigned – a black high school teacher was assigned in a school where it was not completely black.

Q. Now, Mrs. Greer, could you look at Plaintiffs' Exhibit 130D, it is the 1960 school year.

Now, during this period of time, from the early 1960's through 1968, am I understanding you correctly that you think black teachers disproportionately were being assigned to black schools while at the same time schools with black pupil populations in terms that they were beginning to increase or had increased in black pupil population and white teachers were being assigned disproportionately to virtually all white pupil populations?

A. As I look at Exhibit 130D, this indicates that that was

the case. We have all black – high percentage of black student body at Dunbar and high percentages right down the line to indicate where there were high percentages of black students we did have high percentages of black teachers and vice versa. This is the case.

Q. Now, throughout this period 1951 to 1968, were there many teacher assignments, both white and black, in terms of teacher turnover, transfers, and new hires?

A. I could not verify that there were. There were always constantly new teachers coming in.

Q. So at the same time you had this pattern of assigning black teachers to schools that were becoming black, white teachers, new teachers or transfers, were being assigned to white schools?

A. Yes.

Here again, we don't want to go into the area of hearsay, but it was generally – it was felt by those of us who were teaching – I felt – let's put it on this basis, I felt –

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A. I felt that schools with predominantly black student bodies constantly receiving black teachers identified us as being black schools.

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Q. Mrs. Greer, what was the effects in terms of the assignments of the black teachers to the schools that were becoming black and white teachers to white schools?

A. As a parent, I had a daughter going to Roth High School when the staff was relatively an integrated staff and so was the student body. But as more and more black youngsters came to Roth High School, the staff became increasingly black, and my concern was to have my daughter involved in a school situation that would help her to live in a pluralistic society, and I felt I was being denied this privilege.

Q. Now, in retrospect, when you look at the situations that existed in 1933, '34, '35, '36, in the Garfield and Willard

and in the Wogaman Schools as the type of thing that you are describing – from 1961 to 1968 did occur, is there any relationship between those two?

A The relationship as we were able to establish by the assignments of staff indicated that as the student body became black, staff also became black separating the schools.

Q. Now, after you came back from maternity leave in 1949, how long did you stay at the Willard School?

A. I stayed there from '49 to '58.

Q. And where were you assigned then?

A. I was then assigned as principal at Carlson School.

Q. And was that the year the school opened?

A. That is correct.

Q. And what was the racial composition of the school when it opened in terms of pupils?

A. I think – I remember correctly that the student body was 213 youngsters, and we had about ten to twelve white students.

Q. And what was the faculty composition?

A. Totally black.

Q. And in 1953, when the Miami Chapel School opened, what was its pupil composition?

A. Black.

Q. And faculty?

A. Black. There was one white teacher.

Q. And at the Belle Haven School which opened in 1954, what was the pupil composition and the racial composition of the staff and pupils?

A. The pupil composition was a hundred percent white and the staff was a hundred percent white.

Q. And in 1957, when the Louise Troy School opened?

A. It was black, with I think – with the exception I think about maybe 95 percent black and the entire student body was black.

Q. And in 1958, when the Shoup Mill School opened –

THE COURT: I am sorry, Mr. Diamond. Which one?

MR. DIAMOND: Shoup Mill.

THE COURT: Shoup Mill. Thank you.

A. Our records substantiate that the staff was a hundred percent white as was the student body.

MR. DIAMOND: Your Honor, may I note for your attention Plaintiffs' Exhibit – I believe it's PX-3 or 4 which shows new schools opening and additions to schools showing pupil composition and staff composition at the time of the opening of the school and with the addition to the school.

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[R. I. 495, Vol. 5] Q. Mrs. Greer, in the questions that have just been asked you concerning certain specific schools, the composition of the student body in those schools was a reflection of the composition of the neighborhood in which they were located, isn't that right?

A. In some instances. As I pointed out, there were some youngsters in the Wogaman School District who lived in that district who did not go to school in that district, so this was not a true reflection of the composition of that district.

Q. There were times when the Wogaman District was overcrowded, were there not?

A. There were times when the Wogaman District was overcrowded.

Q. And I think you testified that at one of those times children from that district went to Jackson School, which was the school of the adjacent district, isn't that right?

A. That is correct.

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[R. I. 497, Vol. 5] Q. Then if we move up to the Washington Elementary School District, there is a black neighborhood in that area on Springfield Street that has existed for many, many years in Dayton, is there not?

A. Yes, because I remember many of those youngsters came to Dunbar High School when I was a student there.

They came all the way from that distance to Dunbar High School.

Q. Which they have the option of doing, as I understand it?

A. Well, yes, they had the option of doing that then but nobody else had a like option.

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[R. I. 502, Vol. 5] A. It was interesting, however, since you are just asking for that purpose, to note that the optional areas between Roosevelt and Colonel White did do an excellent job of siphoning off white students that were at Roosevelt.

Q. All right. And right now, the students who are living in that optional area north of all of these natural boundaries are largely black people, are they not?

A. Right now, yes.

Q. And the effect of that option is to permit them to go to Colonel White High School, is it not?

A. I don't know whether it is or not, but I do know, as I said before, at the time when I was closely involved with Roosevelt, it did do the job of siphoning off whites. Of course, the neighborhoods have changed.

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[R. I. 515, Vol. 5] Q. And as the neighborhoods changed, the compositions of the schools serving those neighborhoods changed?

A. Yes. But I would certainly like to re-emphasize that assignment of staff to go along with the neighborhood change was the kind of thing that gave the impression of the schools designed to be black, because black staff increased as black student bodies increased.

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[R. I. 520-523, Vol. 5] Q. When you went to Roosevelt High School there was no Colonel White High School, was there, Mrs. Greer?

A. Colonel White was a junior high school.

Q. All right. But there was no four-year high school in that location?

A. Yes.

Q. And am I not also correct that the only high school north of Wolf Creek would be Fairview High School which is quite some distance to the north of that area?

A. Yes.

Q. Now, by the time that Colonel White became a four-year high school the only way that you could get from this area north of Wolf Creek to Roosevelt by public transportation would be to take a bus all the way to downtown Dayton and then transfer to come all the way back out to Third Street, isn't that correct?

A. Would you rephrase your question?

Q. If I were living in this optional area, when Colonel White became a high school as opposed to Fairview High School, to get from my home down to Roosevelt High School without walking through the Dayton Tire and Rubber Plant and going over the railroad tracks and crossing either the Summit or the Broadway Bridge, I would have to take a bus on Salem, go to downtown Dayton, get a transfer and come back out Third Street to Roosevelt, wouldn't I?

A. Yes, but I do know at that point in time there were youngsters crossing these various kinds of boundaries to walk to school.

Q. Whereas, when the Stivers District was expanded in the past few years, the district was expanded in order to take over the essentially black elementary zones of Irving and Whittier, was it not?

A. Yes. That was planned when the boundaries were changed for Stivers.

Q. So that had the effect of achieving a greater degree of integration at Stivers High School, didn't it?

A. Yes, in the residence area when that occurred.

Q. And to get to those zones from Stivers by public transportation you would have a straight shot on the bus instead of having to go down and transfer and come back out, isn't that right?

A. If we consider only bus transportation, yes. But automobiles and walking and so forth were implemented by children living in the city to cross these various kinds of barriers.

Q. Mr. Diamond asked you about Allen Elementary School. That school was actually built in 1899, wasn't it?

A. Yes. The addition of Allen Elementary is considered a separate school on our listing, but I would assume that it is considered a separate school generally.

Q. But that addition was made in 1969, wasn't it, so a school that existed in that area for 70 years?

A. They are considered as separate schools in our listings.

Q. In the 1969 school year, to your knowledge was that at a time when there was substantial space in both white and black schools throughout the system as far as capacity?

A. Yes. We determined that there was space in many schools that we were not utilizing.

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D. TESTIMONY OF CHARLES H. RIVERS.

[R. I. 350, Vol. 5] Q. Could you state your name, please, sir?

A. Charles H. Rivers.

Q. What is your present occupation?

A. Project Director, Title 8 Program, Dayton Public Schools.

Q. When did you move to the Dayton area?

A. I started in Dayton in the summer of 1950, just visiting, working, and I would leave in the fall going back to school. Permanently in 1954.

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[R. I. 367, Vol. 5] Q. Mr. Rivers, I think I have a little logical problem in my mind as to your last several answers.

Do I understand your testimony to be that in your opinion the assignment of a black faculty to a school makes it identifiable as a black school regardless of what the school student composition is?

A. No. I said black faculty to a black school.

Q. When the school is already black, as far as student composition is concerned?

Let me withdraw the question. I don't know that it is really a question.

I take it what you are really saying is that a school becomes racially identifiable when its student population becomes either predominantly or all-black or predominantly or all-white, isn't that right?

A. That's right.

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[R. I. 377, Vol. 5] Q. Aside from what you were told, do you actually know of any children that live in such an optional area or what the boundaries of it were?

A. The boundaries in terms of what?

Q. In terms of streets.

A. I do not recall the names of streets.

Q. Do you know of any specific students living in the area where the option occurred?

A. Not by name.

Q. During this period when you were at Jackson School, there were substantial numbers of black students in all three of those neighborhood schools, were there not?

A. Westwood was in a transitional period. I don't know what you mean when you say substantial, but as I say, it was in a transitional period. Jackson Elementary did have a few white students. Residence Park was basically white.

Q. But there were some black students in Residence Park, were there not?

A. I couldn not attest to that because I did not see any. I would assume so since there were a few blacks moving in that particular area at that time.

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E. TESTIMONY OF MARY WHITE.

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[R. I. 389-395, Vol. 5] Q. Just state your name and occupation, please, ma'am.

A. Mary Louise White, Executive Secretary to the Superintendent.

Q. Miss White, how long have you been with the Dayton Public Schools?

A. I came to the Dayton Public Schools in September of 1961.

Q. Where were you employed at that time in the system?

A. I was employed as a secretary to the Assistant Superintendent for Personnel.

Q. And that's Mr. Royer?

A. Right.

Q. Were you acquainted, Mrs. White with the records kept in that office with respect to teachers?

A. Yes. It was a two-girl office and each of us were responsible for records, filing and keeping records.

Q. Can you describe for me at the time you came to the office in 1961 the method of keeping records relating to the substitute teachers?

A. Well, it was kept in a file folder. When they were employed, it was put into a file folder and there was a code a mark for the black substitute teacher.

Q. Have you at my request by subpoena brought some examples or an example of those files with you?

A. Yes, sir.

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Thereupon, the document referred to was marked for identification as Exhibit 158.

Q. In the substitute records can you tell me what color cards were used for white teachers and what color cards were used for black teachers or was there only the indication of the dot?

A. Just the indication of the dot.

And may I show this, Judge Rubin?

THE COURT: Yes.

A. This was the card that was kept at the call desk. This is where the calls were made for substitutes. It likewise had the same designation.

Q. All right. Now, when you say at the call desk, can you tell me what the call desk was?

A. Well, of course, we are a large system and our calls come into a central call center for substitute service. At the time I started it was a switchboard. The switchboard operator handled these with the aid of an assistant part time.

Then we reached a point where we needed a fulltime substitute service office, and we now have that designated within the personnel department.

Q. So the cards of the jacket which you just demonstrated with the blue dot were maintained at the call desk?

A. It was maintained in the personnel office. The one that is inside, this happens to be a former teacher, a former substitute.

Q. I see.

A. This was kept at the call desk.

Q. That would be the jacket?

A. The information on what subjects this person could teach as well as certification and this type thing.

Q. Would you illustrate the other card to the Court?

A. The other system that was kept –

Q. No, I am sorry. Is there another card for the substitute other than the one you have just illustrated?

A. No, but for regular teachers. The other cards describe –

Q. For regular teachers?

A. Yes, our applications for regular teachers.

Q. Now, the blue dot does indicate a black teacher, is that correct?

A. Yes, that is right.

Q. How long were these records kept in that office, or how long were you familiar with them?

A. They were there as long as I was there.

Q. And that was through what date?

A. From September of 1961 through – well, it was the latter part of July of 1967.

Q. All right. Now, what about regular teachers?

A. The regular teachers applications came to the personnel department and, of course, we kept a cross-card file. This was a buff card. It was by subjects in alphabetical order, and the regular buff card was for the white teachers, and then we had blue cards with the subjects listed for the black teachers.

Q. Did you also have pictures of the teachers on the cards?

A. No, not on the cards. The only time a picture was kept was after employment, when a person was on the payroll.

Q. And you have a picture of the file?

A. After employment, yes.

Q. In other words, even if the dot had been removed or you had different colored cards, you could still identify the race of the teachers?

A. Yes.

Q. What was the practice during that time with respect to the assignment of the substitute teachers?

A. As far as I know, and of course the substitutes were called from the other switchboard, as I said, it was a practice that black teachers – black substitutes went to black schools and whites went to white schools, as was common with the assignment of regular teachers.

Q. Now, were black teachers sometimes sent as substitutes to white schools?

A. Yes.

Q. You say this was a general practice?

A. Yes, sir.

Q. With exceptions?

A. Yes, sir.

Q. Were you personally aware of these assignments, and, if so, could you tell me how?

A. Yes. I was personally aware of the assignments. We were a small office. We each knew the other's job, and in times of illness I pinch-hit for someone else who did the calling.

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[R. I. 398, Vol. 5] Q. And insofar as regular teachers are concerned, the buff and blue cards situations you have referred to ended in '63, to the best of your recollection?

A. To the best of my knowledge it did.

Q. Now, were you the person that was in charge of these personnel records or was the other girl?

A. The personnel records were a matter that was shared. The substitute teachers' cards were primarily the responsibility of the clerk-typist in our office, but of course we were a two-girl office and we each knew the other's position and we did interchangeably work in each other's positions.

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[R. I. 401, Vol. 5] A. That was the practice.

Q. And do I understand correctly that the reason for the blue dot on that card was that sometimes you would get specific requests for black substitute teachers?

A. That is correct.

Q. And those requests would come from school principals, I take it?

A. Yes.

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Q. Just to clear one matter up, you said the purpose for the cards was if you got requests for black teachers. Did you

also say the practice was assign black substitutes to black schools and whites to white schools?

A. To the best of my knowledge, it was in my early days there.

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F. TESTIMONY OF ROBERT L. GREEN.

[R. I. 405-407, Vol. 5] Q. State your full name and your occupation, please.

A. Robert L. Green, Assistant Dean — rather Dean now, Urban College, Michigan State University, Professor of Educational Psychology.

Q. And would you give us your educational background, please?

A. Elementary School, Detroit, Michigan; graduate of Northern High School, June 1952; Bachelor's Degree, Psychology, 1952, San Francisco State College; Master's Degree, 1960; Psychology, San Francisco State College; Ph.D., 1962, Michigan State University, Educational Psychology.

Q. Would you give me your work experience, please?

A. Professionally, I have functioned as a group counselor.

Q. Excuse me. Would it help you to have data to recall it all?

A. Yes.

Q. Keep your seat, Doctor. I will bring it to you.

A. Beginning very briefly in 1959-1960, I was a Research Assistant at the Langley-Porter Psychiatric Clinic at the University of California Hospital. I have been a School Psychologist with the Oakland System employed by the Juvenile Court of San Francisco as Group Counselor, Psychologist with the Lansing Child Guidance Clinic, and I came from the University ranks from graduate student instructor to assistant professor to associate professor to full-time professor and now I am administrator at the University.

Q. In 1965, did you have a particular employment with the United States Office of Education?

A. In 1965 I was principal investigator of a research project in Prince Edward County, Virginia related to educational status of approximately 1700 black youngsters who were out of school as a function of school closing in that community related to a school desegregation case, and I was primarily responsible for the research data which provided the Justice Department with an opportunity to negotiate with school members in that community in an effort to reopen the schools.

Q. All right. Did you hold a position in 1965 also with the Southern Christian Leadership Conference?

A. I was a National Education Director for the Southern Christian Leadership Conference during that period of time.

Q. All right. In 1967, did you hold another position or direct another project for the United States Office of Education?

A. In 1967, I believe, the summer of 1967, during that year I was primarily responsible for developing with the support of the U. S. Office of Education a major basic adult education project in the City of Chicago cooperatively with the Michigan State University.

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[R. I. 433, Vol. 5] Q. Dr. Green, I believe I informed you that the faculties were desegregated as a result of HEW action in 1970.

Do you have an opinion as to whether or not the effects of this history of faculty assignment persist in terms of identification of schools as black or white in the school district after the changing of the faculties as was done in this case?

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A. Yes. The answer is yes, Mr. Lucas. When there has been historical practice of placing black teachers in schools specified as being essentially black schools and white teachers in schools that are identified or specified as being essentially white schools, even though faculty desegregation occurs, be it on a voluntary basis or under court order, the effect remains

that school is yet perceived as being a black school or white school, especially if at this point in time the pupil composition of those schools are essentialy uni-racial or predominantly black or predominantly white.

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[R. I. 457-464, Vol. 5] A. THE WITNESS: If it is a 100 percent black city, it would be then perceived perhaps as a City school or community school, but in the context of a city in which you have a range of racial groups, it is difficult to perceive a school as being other than a black school. I would guess if one went to Westchester County, one might perceive those schools as general community schools, or Gross Point, Michigan where there are no blacks at all, one would perceive those schools as community schools, schools within the general community, but in the context of a racial range in which you have blacks, whites, and in many Texas communities browns, schools then become racially identifiable in the context of the general composition of the community. See, the perception of a school develops within the context of a general community and there is no other way to perceive that school except in the context of the broader community.

So, your Honor, if I might make this final statement, in the context of Dayton, Ohio, even though I haven't spent the night in Dayton and I have only been to the airport and I have only driven through the city, I would presume there are blacks and whites living in the City of Dayton; is that correct, sir? And if blacks and whites are living in the City of Dayton, Ohio, if that is a correct assumption and I may be incorrect, if it is a correct assumption, then when you have in the context of that community an all-black school, if you have a pupil composition of a school that is all black, even though the faculty is desegregated, those schools are perceived by black people, by white people, by black teachers, by white teachers, by black administrators and white administrators as being black or white.

BY MR. GREER:

Q. And it wouldn't make any difference what color the faculty was?

A. The racial composition of the faculty, sir, alone does not allow that perception to change.

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Q. By the same token, if we had a school whose racial composition was totally white and we had an all-black staff in that school, it would still be perceived as a white school, would it not?

A. That is correct, and that is in the same context of my last response.

Q. All right. Now, let's move through a few more examples and I will try not to make the list too long. Assume that in 1950 and 1951 the student population of Weaver Elementary School was 69.9 percent black. That would be perceived as a black school, would it not?

A. In 1960? What year, sir?

Q. You don't have to look at any paper. I am asking you to assume this for the sake of my hypothetical question. Assume that in 1950 and 1951 the student population of Weaver Elementary School was 69.9 percent black. That would be perceived as a predominantly black school situation, wouldn't it?

A. It could be.

Q. And the fact that the school had an all-white staff at the time wouldn't change that perception, would it?

A. That's true.

Q. Now, consider the same school, Weaver Elementary School in 1958 and 1959 as having a 98.8 percent black student population. It would certainly be perceived as a black school, would it not?

A. Yes.

Q. And the fact that the staff of that school was integrated on a 50-50 basis black and white wouldn't change that perception, would it?

A. That does not change that perception of the school being a black school, that is correct.

Q. Now, let me ask you to assume that in 1958 and 1959 Edison Elementary School had 80 percent black students. That would be perceived as a black school, would it not?

A. Yes.

Q. And the fact that the staff was only 19.2 percent black wouldn't have any relevance to that community perception, would it?

A. That's correct.

Q. Now, assume in 1958 and 1959 Jackson Elementary School was 98.5 percent black insofar as student composition is concerned. That would be perceived by the community as a black school, would it not?

A. Yes.

Q. And the fact that the staff was only 27.3 percent black would not change that perception, would it?

A. That's correct.

Q. Assume that in 1958 and 1959 Irving Elementary School was 96.6 percent black and student composition. That school would be perceived in the community as black, would it not?

A. That's correct.

Q. And the fact that the staff was only 27.8 percent black would not change that?

A. That school would yet be perceived as black school in the context of Dayton in the context of my prior response.

Q. Now, let me ask you about Highview Elementary School which in 1958 and 1959 had 82 percent black students. Your answer would be the same, would it not?

A. Yes.

Q. And it would make no difference that the faculty at that school was only 17.9 percent black?

A. That school would yet be perceived as being essentially a black school.

Q. And in 1958-1959 if Whittier School had 95.6 percent black students, it would be perceived as a black school, wouldn't it?

A. That's correct.

Q. And the fact the staff was 34.4 percent black would have no relevance, would it?

A. That's correct in the context of how that school is perceived.

Q. And in 1958 and 1959, let's go to Roosevelt High School which had 94.5 percent black students. That would be perceived as a black school, wouldn't it?

A. That's correct.

Q. And the fact that the staff was only 9.5 percent black at the time would not change that perception?

A. That's correct.

Q. Assume that by 1963 and 1964 the percentage of blacks on the Roosevelt staff had grown to 26.8 percent black. That wouldn't change the perception of the school, would it?

A. No.

Q. It would not surprise you to find that the school still had the same 94.5 percent of black school composition, would it?

A. Today?

Q. As of the time of the increase of the blacks in staff, that would not be surprising to you, would it?

A. No, it wouldn't. In terms of the prior figure you quoted, the school is remaining black in terms of pupil composition.

Q. All right, and all I am really trying to establish is that the percentage of blacks on the faculty have no relevance to that perception; isn't that true?

A. It doesn't change the perception. If I might precisely state my point again to make sure it is fully understood by the Court, desegregating the faculty of a particular school community when in the past it has been a systematic placement of teachers to schools based on race, based upon the racial composition of the school and using the race of the teacher as a factor, simply desegragating the faculty without at the same time desegregating the pupils or students within that system does not change the community perception of that school.

Q. All right. I think I understand that point and the only point I am trying to make which I think I also understand from your testimony is that the actual faculty structure of the school doesn't really have the same kind of effect on the community perception of the school as the student population.

A. It doesn't have a full effect. It is important to desegregate a faculty, but it does not change the full perception of the community of that school.

Q. In fact, in your own individual case, the high school that you went to in Detroit you characterized as an all black school; isn't that true?

A. We had white teachers.

Q. You had all white teachers, did you not?

A. No, we did not. There were some black teachers at the high school. The coaches were black, basketball – well, the football coach was black and the track coach was black and there was a math teacher that was black. There was a very limited black teaching faculty at my high school. If I could take a guess, I would imagine in the neighborhood of about 10 percent. That was in 1952, of course, when I graduated.

Q. And despite the fact there were a very few black teachers in that school, the staff was essentially white but you perceived it as a black school, did you not?

A. The general comunity perceived Northern High School at that time as being a black high school.

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Q. Since there is some question about Northern High School and your identification of it because children were being bussed, I believe you testified that the major point was the boundary line between Northern and other white schools. Children were being bussed to Northern, I believe you testified, in Detroit from another suburban school district, an all black suburban district to Northern.

A. Correct.

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[R. I. 465-467, Vol. 5] Q. Now, you were asked a whole list of examples of schools. I think it started with Weaver in 1951-52 with 69 percent black students and a majority white faculty at that school, and you indicated the school would be identifiable as black because of its pupils. I believe the opening question related to a staff situation that I gave you that Weaver and several other schools in the period of 1951 to 1956-57 had the assignment for the first time of black teachers to the schools and that those schools, in fact, were the schools in the Dayton School System that already had the largest number of black children.

A. That's correct.

Q. And to make sure that the precise question is asked in the context of Dayton where the rest of the schools have white faculties and white student bodies, does the assignment of the black teachers to those schools as opposed to other schools with white children in a community accelerate or does it affect the perception of whether or not that school is intended to be a black school?

A. Not at all.

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[R. I. 468, Vol. 5] Q. To make sure we are together on the example, schools that have the largest proportion of black pupils and the other schools have no or have very few black pupils.

A. As a matter of fact, this could well and perhaps does facilitate that school in becoming perceived as being a black school or black area if I might use that term.

Q. But in another context assuming you knew nothing about faculty, these schools would be perceived as black instead of white?

A. Indeed it does have a label of a haven for blacks or one reserved for blacks.

Q. And if in association with that same school and assignment patterns, whites were permitted to transfer out into some

optional areas, does that tend to label this changing school as a black school?

A. Yes, and it facilitates the pattern of segregation.

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[R. I. 469-470, Vol. 5] Q. In a situation where a school because of its student population is perceived as predominantly or essentially all black, if it had had a white faculty at the time that perception was made, you would approve, would you not, adding black teachers to that faculty?

A. I would have to answer that question in the context of the total system, if I might. I would approve of desegregating that faculty, but at the same time I would also approve of desegregating the pupil body composition because in the context of your question adding black teachers to a school with a formerly all-white teaching faculty and a large body of black pupils will lend itself to perceiving that school as being indeed a black one especially when pupil desegregation is not being put into effect.

Q. Although you already indicated the community would make a perception of the school as being a black school when the student composition reaches something in the neighborhood of 67 percent, haven't you?

A. I don't want to play the number game. Again, it would depend upon the racial composition of the city.

Q. Well, I don't want to play any games with you, Dr. Green.

A. Well, I would not focus on necessarily 57 percent or 30 percent or 28 percent whether or not a school is perceived as being a black school or a white school. This must be placed in the context of the proportion of blacks, percentage of blacks, percentage of whites in that particular city.

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G. TESTIMONY OF ROBERT REESE, SR.

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[R. I. 529-533, Vol. 6] Q. How did you get to school?

A. Walked.

Q. You walked across the bridge and the river separates that where you lived and the Central School; does it not?

A. Yes, sir.

Q. You walked across the bridge and got to that school; correct?

A. Yes, sir.

Q. Take your seat.

Did there come a time, Mr. Reese, when someone at the School Board found out that you were attending Central with a false address?

A. Yes, there did.

Q. What happened?

A. Well, they sent us home from school and told us we had to go to Garfield School, my sister and I.

Q. Did you go to Garfield School then?

A. No, I didn't go.

Q. Why didn't you go?

A. Well, my father didn't want us going out there in those frame buildings, so he filed a suit against the Board of Education and kept us out of school one year.

Q. You say out there in the frame buildings, can you tell me what was in the frame buildings?

A. Classrooms were black students and black teachers.

Q. And was there another building on the Garfield site?

A. A brick building with white teachers and white students.

Q. So, your father didn't want you to attend the black segregated classes; is that correct?

A. Yes.

Q. And he filed a lawsuit. Did you subsequently get into the brick building?

A. After they won the suit the following year because he

died the 29th of June in 1925 and in September of 1926 I returned to Garfield in the brick building.

Q. All right. Did they still continue to operate the all-black classes and black faculty in the back of the brick building?

A. Yes, sir.

Q. And were they there after you finished your elementary school at Garfield?

A. When I left and went to Roosevelt, they were still there and still operating.

Q. While you were in the Garfield School, did they have any black classes during subsequent years in the brick building?

Q. After you left the Garfield School, where did you go?

A. Roosevelt.

Q. When you were at the Roosevelt School, did you participate in all school activities?

A. Football.

Q. Did you play freshman football?

A Yes, sir.

Q. Was there any separation of the races in connection with that?

A. Well, we had separate locker rooms, separate showers, and they had what they called the east and west swimming pools, and the white boys swam on one day and black ones swam another day.

Q. You did not swim in the same pool together at all; is that correct?

A. Yes.

Q. Did you leave Roosevelt after that?

A. When Dunbar opened, I left Roosevelt and hightailed it over to Dunbar.

Q. And why did you go to Dunbar?

A. I wanted to be free. I felt more at home at Dunbar than I did at Roosevelt.

Q. Why is that?

A. You couldn't segregate me at Dunbar.

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Q. At Roosevelt, Mr. Reese, the classes that you attended were integrated and had both black and white in them, did they not?

A. Right.

Q. And the football team on which you played had both black and white players on it, did it not?

A. Right.

Q. The practices you indicated as far as the separate locker rooms, showers and pools terminated by 1950, did they not?

A. I wasn't there in 1950.

Q. So, you don't know when they terminated?

A. I don't.

Q. Now, when you were attending Central Elementary School under a false address in the early '20's, you were in mixed black and white student classes there?

A. Yes.

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H. TESTIMONY OF IRVING MOSES.

[R. I. 536-542, Vol. 6] Q. State your full name and occupation, please.

A. My name is Irving Moses. I am principal of the Fairport School in the Dayton School System.

Q. Are you a lifelong resident of Dayton?

A. No, I am not, sir.

Q. When did you first come to Dayton?

A. I first came to Dayton first in 1952. I moved my residence to Dayton in 1954.

Q. When you first came to Dayton did you have any connection with the school system or any contact with them?

A. Yes, I did. I submitted my application for a teaching position.

Q. All right. Did you subsequently obtain a position with the Dayton School System?

A. Yes, I did, in 1955.

Q. Had you been teaching prior to that time?

A. Yes, I had, sir.

Q. What is your degree?

A. Well, when I came to Dayton I had a BS Degree from what is now Kentucky State University and a Master's Degree from Indiana University.

Q. And what particular field had you been teaching in?

A. I had been teaching science.

Q. And that would be for how many years?

A. Four years I believe.

Q. Did you take an examination that was given at that time for principals' positions?

A. It was after I began teaching in the system, yes. I took the examination. I don't remember exactly what year it was. '55 or '56, somewhere along there.

Q. Did you subsequently obtain a position as an assistant principal?

A. Yes. In 1960 I was appointed assistant principal at Westwood School.

I think I was the first assistant principal at Westwood; I believe the second assistant principal in the elementary schools of the City of Dayton.

Q. O. K. You were there in what year? 1960?

A. 1960 – the terms 1960-1961, 1961-1962.

Q. And am I correct that the pupil population of the schools was aproximately 70 percent black at that time?

A. When I left, yes, it was 70 or greater.

Q. What happened to the faculty, the racial composition of the faculty during the period of time you got there, from the time you got there to the time you left?

A. As I remember, I think there was – when I went to Westwood there were – I think I was the fourth person, black person, on the staff there, either the fourth of fifth.

Q. What at the time you left was the situation?

A. Well, quite a few blacks came in that year. As I remember, the first year I was there there was some ladies who returned from maternity leave, and I remember we had some classes in a church. We had three classes I believe in a church and one of the ladies took a first-grade class in a church.

Q. By the time you left what was the racial composition of the faculty? Had there been a change of any substantial nature?

A. I don't remember what percentage it were, but there had been a substantial change.

Q. From white to black?

A. From white to black, yes.

Q. And this was during the time when it was rapidly changing from black to white in population, is that correct?

A. Yes. Yes, it was definitely so.

Q. After you left Westwood, what school did you go to?

A. After I left Westwood I went to MacFarlane. I had to reorganize MacFarlane as an elementary school.

Q. Was this in 1962?

A. This was in 1962, yes. I worked all that summer gratis.

Q. Is this the time that Garfiield and Willard Schools were closed?

A. They had been closed and the pupils at Garfield and Willard or the greater part had been assigned to MacFarlane School. I believe we did get some pupils also from Grace A. Greene and Weaver Schools, too. We had about 1300 children that year.

Q. What about your new faculty at MacFarlane?

A. Well, some of the teachers – most of my staff were the teachers who were reassigned from the two schools that were closed, Garfield and Willard.

Q. I think the statistics indicate that as of 1966 MacFarlane had only one white teacher. Was this a full-time teacher or a specialist of some sort?

A. She was a specialist. She was a reading specialist in the primary grades, Mrs. Velma Vernon.

Q. Did you subsequently get another part time or another specialist white teacher?

A. Yes, another special teacher, Gilbert Unger. He was a band teacher. He came in once or twice a week to instruct the children in band.

Q. All right, did you have any dealings with Mr. Royer?

A. Yes, each year, when we were projecting enrollment and so forth, getting our organization ready for the following year, I would have to set up a conference with him.

Q. Did you have any meetings with Mr. Royer with respect to the question of assigning full-time white teachers to MacFarlane?

A. Oh, yes. This came up and I asked him, I reminded him when I came to Dayton I had very few places to work. My first year, when I first made aplication, he sent me – there was a position open in biology, I think the basketball coaching position was connected with that, and I was sent out to Dunbar High School to talk with the principal about this job. This was the year before I finally got on, and another teacher got the job, incidentally, but –

Q. What do you mean by very few positions open to you?

A. Well, because at that time black people – black teachers and blacks were only hired in a few schools.

Q. Going back to the time of MacFarlane, your meetings with Mr. Royer, did you have any conversation with him with respect to the assignment of full-time white teachers to MacFarlane?

A. Yes, every year – this would happen just about every year. I would ask him why were only black teachers assigned certain schools, and I reminded him when I came to the system I only had, you know, a certain choice, and I asked him why is it that white teachers had a choice.

Well, I told him, I said, "I don't care what color the teacher is as long as she can work with children. It doesn't make any difference to me whether she is white, black, or blue for that

matter, and he said, "Well, the reason we don't assign white teachers to black schools, in the first place, they would quit." And then he went on to say that some of the husbands – the women teachers' husbands didn't want them to work there.

Q. These were black schools?

A. Yes, they had black pupils.

Q. Is there any question about them working under a black principal; is that the problem?

A. Oh, yes. Yes, he definitely said that the teachers, white teachers would not serve under black principals.

Q. You were a principal and you are black; is that right?

A. I think I am. I was a principal.

Q. I don't know what word we use at that point.

Mr. Moses, in 1967 did you have a problem with overcrowding at the McFarlane School?

A. Oh, yes, we were very much over-crowded, and I believe this is the year that we rented space in a church nearby.

Q. That would be the Bethel Church?

A. Bethel Baptist Church, yes. It's on the corner of Summit and Home Avenue.

Q. How about the Tabernacle Church; did you rent space there?

A. Yes, we had rented space in the Tabernacle Church. We had the pre-school program, and I think we had a building adjacent to the tabernacle church. I think we had some classes in the basement, or either one of the annexes there.

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[R. I. 544, Vol. 6] Q. What about Jackson; are you familiar with that?

A. Oh, yes. I forgot Jackson School, yes. Jackson School is built, I believe on the Home Avenue side of Jackson Elementary. It still exists, yes. All these schools were built, I believe, in the '60's.

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Q. Mr. Moses, the only locations in the system were to relieve overcrowding because of heavily populated neighbor-

hoods, two schools were built, one elementary and one primary, were the Louise Troy, Residence Park, Jefferson and Jackson situations; isn't that right?

A. Those are the ones that I am familiar with, because I am in that area. I can't say they were the only ones.

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[R. I. 547, Vol. 6] Q. We unfortunately don't have any way other than by rough estimates by people such as yourself for the racial composition of the student bodies of these schools before 1963 as I understand it. Do you have any percentage figure that you can give us as the composition of the student body?

A. Not being a statistician, I didn't keep any figures like that. I was just an employee of the school. I couldn't give you any exact figures, but I could see there was a change over. The composition did change.

Q. Can you tell us whether the school was more than 50 percent black when you first went there?

A. When I first went there, it was less than 50 percent black.

Q. There had been a number of additions to the Westwood School to take care of overcrowding conditions up through 1954, had there not?

A. I can't answer before 1954. I know when I went there there was some construction in process.

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I. TESTIMONY OF JOHN HAREWOOD.

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[R. I. 565, Vol. 6] Q. Would you state your name, please, sir?

A. John Harewood.

Q. What is your present position with the Dayton Public Schools?

A. Assistant Superintendent in charge of administration.

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Q. During that period of time was the Dunbar High School an all-black high school with an all-black faculty?

A. All black, all the way.

Q. During that period of time did you assist in transporting the athletic teams?

A. Yes, indeed. From '38 until probably '48, that was the first time the basketball team was admitted to the City League, and '49 for the football team. During that period of time, in order to provide the type of experiences which we felt that the students should have, especially athletes, we did everything possible to substitute for the lack in this area, and we used to take our cars and drive them to different places so they could participate in football, scholastic football. We took them to Louisville, Kentucky, to St. Louis, Missouri, to Indianapolis, different places. That was just a contribution we made in order to make up for some deficiencies which we felt were not the type of things that should happen to young people in our public school situation.

[R. I. 570, Vol. 6] Q. During the period from 1943 to '45, did you have a foster daughter in the Dayton Public Schools?

A. Yes.

Q. And where did she attend school?

A. At Wogaman Elementary School.

Q. And during that period of time was there any change

in the pupil composition and racial composition of the black faculty and pupils?

A. Not '43. Did you say '43?

Q. '43 to '45.

A. No, not during that time, no.

Q. And was there shortly thereafter?

A. Yes. In 1945, when they appointed a black principal there, then there was a change.

Q. And what happened?

A. At the end of the spring – end of spring session they had an all white faculty and they appointed a black principal. In the fall they had a black principal and an entire black faculty there, black student body.

Q. Were there white children still living in the Wogaman attendance area?

A. There were.

Q. They did not attend the Wogaman School?

A. They did not.

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[R. I. 573-574, Vol. 6] Q. In other elementary schools were there black children at that time with some of the children going to Roosevelt and some going to Dunbar at the high school level?

A. Some of the black children, yes.

Q. And was there any selection process of channeling of these children?

A. We as counsellors visited all these feeder schools, we call them, to take over high school course selection to supposedly all the children in the 8th grade to give them the benefit of our experience as high school people, to indicate to them how high school election blanks should be filled out, the type of courses they should take and so forth. And interestingly enough, in my visits to some of the schools, in some of the schools I got to talk to all the children. And, so, after the first year that was corrected, after somebody made some complaints about it, and only a few children were selected. We

were only allowed to talk to those few children who had been selected, by some means I don't know what, children who were going to Dunbar High School.

Q. And that would not include all the black children?

A. No, it would not.

Q. Were you ever invited to discuss a promotion to a principalship?

A. Yes. In 1949 I believe I was requested to come to discuss the opening at Willard Elementary School to see if I was interested in becoming a principal there. I discussed that with the members at the Central Office staff.

Q. What was the racial composition at Willard?

A. Black.

Q. And the faculty composition?

A. Black.

Q. And did you accept that job?

A. No, I did not.

Q. Why not?

A. First of all, my training was in high school. I felt that I had ability to work in a high school situation. I felt that my relationship with high school students was such that I could make a contribution there.

So I thanked them for their invitation and told them I felt my contribution was in high school so I did not accept that position.

Q. Did you later apply for a principal position?

A. Yes, in 1954 I applied for the position of principal of Wogaman Elementary School.

Q. And what was the racial composition of Wogaman School in terms of pupils and faculty?

A. Black.

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[R. I. 576, Vol. 6] That was the only alternative I had in a segregated system, as was said to me, that there was no – even though I was qualified and they said I was qualified,

they would pick others with less experience, with less qualifications than I and appoint them to positions, that either I accept no promotion or I take something else, and that's the reason that I went down and applied for the position at Wogaman School.

Q. And in what year was that?

A. 1954.

Q. And did you receive that position?

A. I did.

Q. And how long did you remain principal of the Wogaman School?

A. Thirteen years.

Q. And during that period of time could you give me the composition of both the pupils and the faculty?

A. The pupil population was all black. I had one white teacher appointed to my staff in 1965 in special education.

I had two or three or four, I don't remember the number of teachers in special subject areas who were there for semester assignment in practical arts, and a music teacher who was there – in instrumental music who was there

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[R. I. 579-580, Vol. 6] He showed me a stack of applications that were all black. There were some with Master's Degrees, wives of people who worked at the Air Force Base and others, and we looked through those and we would comment what fine applicants they were, and the tragedy was that out of that many I needed one or two, and they were just there, yes.

Q. Separate pile of black applications?

A. Yes, that's right.

Q. Did your school ever have tuition pupils?

A. Yes.

Q. Could you explain for the Court what that means.

A. Pupils who live out of the Dayton School District who by paying a fee which is stipulated by the Board of Education could enroll in a particular school in any particular class

if there was room in that school or class for them. And if they made arrangements through the Pupil Personnel Department for enrolling in the school, then they could become tuition pupils there.

Q. They had to be approved at the Central office?

A. Yes, that's right.

Q. And during what periods of time, and give me roughly what number of pupils and the race of those pupils who attended your school on a tuition basis?

A. Pupils, they were all black, tuition pupils who attended. I can't give you specific numbers but in one of the years, probably '63 or '64, I happened to be in conversation with the personnel in charge of collecting the payment for them in the Clerk Treasurer's office. They indicated to me that we had a larger number of tuition pupils than any other school in the city.

Q. And no white tuition pupils came to your school?

A. No white, no.

Q. In the 1966 school year were you considered for a promotion?

A. Yes.

Q. And what was that?

A. I was first – considered may not be the word. Robert French, who was Superintendent of Schools, was chatting with me informally and saying that the pressure was on them to integrate the Central Office staff. He asked me would I be interested.

I thanked him very politely, said no, because I didn't want to receive an appointment just because of race or take a token assignment. That was the end of the conversation.

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[R. I. 582, Vol. 6] He asked me was I interested.

I said on those conditions, that's a position that my qualifications made me eligible for, then I would accept the position if it was offered to me, and under those conditions I was then

appointed as Director of Secondary Instruction Curriculum for the Dayton Public School System.

Q. During the period of that appointment did one of the schools in the system have a fire?

A. Yes. Edison School had a fire during the time I was serving as Director of Secondary Instruction Curriculum. Yes, sir.

Q. What did you do? How did you decide to take care of pupils in the spaces that had burned down?

A. The decision was not mine. I did not sit on the Executive Committee at that time. I was called in because of the problem we faced in reference to housing black children because of the fire.

At the meeting there was brought in from the Business Department a list of rooms in churches in the neighborhood of the Edison School, and they were trying to decide the best method for housing the children in the schools because the fire had been held.

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[R. I. 583-584 Vol. 6] Q. When those children were transported, where were they assigned within those schools?

A. I don't remember all the schools to which they were assigned, but one thing which was disturbing was the fact that in some school situations they were transported as a class with the teacher and came into the new school not as a part of the new school but still maintained their same identity as a class in the school to which they were assigned.

Q. In other words, there would be totally black-contained units in white schools?

A. That's right.

Q. Were you consulted on that decision?

A. No, that was not my decision.

Q. In view of your experience, your present experience, and your years of experience with both elementary and secondary education, was that decision to segregate those children educationally justifiable?

MR. GREER: Objection, your Honor.

THE COURT: Sustained.

MR. DIAMOND: Your Honor, I believe that Mr. Harewood has testified that he has been with the school system some 35 years; that he now is the Chairman of Administration —

THE COURT: Mr. Diamond, you have had testimony as to what occurred. These classes were transported into literally a black enclave, and that is what I am concerned with.

Whether there were the best of reasons or the worst of reasons, or no reasons at all, we wind up with that fact, and that so far as I am concerned, is all the Court is considering at this time.

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[R. I. 586-587, Vol. 6] Q. Earlier had there been another school fire?

A. Yes.

Q. About what period of time?

A. 1963, I believe, Ruskin School.

Q. What was the predominant racial characteristic of the Ruskin School?

A. White.

Q. When that school or spaces therein were shot by the fire, in what manner were those pupils assigned?

A. Similarly.

Q. When you say similarly, this time they are white pupils?

A. Yes, but they were assigned with a teacher in some of the other schools to which they were assigned, speaking specifically of Central School, I remember that situation.

Q. At the Central School they would be in separate classes?

A. Yes.

Q. What was the racial composition of the Central School?

A. It was white and black. I don't know the exact percentage.

Q. In other words, it was a mixed school of some sort?

A. Yes.

Q. How long did you remain as the Director?

A. Two years.

Q. When did the policy end of segregating the pupils from the Edison School in other schools?

A. Let's see. Dr. Carle came as a superintendent and one of his instructions to all of us was to make sure that principals in the schools sent in to us their plan for integrating Edison pupils into the regular staff, and that was to be submitted to us before school began that next year.

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[R. I. 590-592, Vol. 6] A. I refer specifically to the desegration of the staff which has occurred and the alternatives and my recommendations in regard to it.

BY MR. DIAMOND:

Q. Then, with respect to pupils as well?

A. Yes. I had a very strong feeling, and I indicated it to teachers and principals, to others who would listen that any desegregation of staff was not addressing the real problem of segregation of pupils which exist in the Dayton Public Schools.

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THE COURT: Whatever he recommended I am interested in hearing. What his thoughts were and his reasons I am not interested in hearing in this • • •

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Q. The Edison School, was it reconstructed after it burned?

A. Yes.

Q. And when the Edison School reopened, what was the racial composition?

A. All black.

Q. And what alternatives were considered to reopening the Edison School as an all black school?

A. The alternatives was to make it an early childhood center.

Q. And what would have been the racial composition of the Edison School as an early childhood center?

A. Black and white, but I don't know about the ratio because it would depend on how many children would attend.

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[R. I. 595-600, Vol. 6] Q. Mr. Harewood, let me make it clear that I want you to sort of list the alternatives and, if you will, I will ask you something further about them.

A. The alternatives that were considered and discussed in Executive Council and recommended by me in the discussion, were such things as pairing schools, magnet schools, looking again at the available classrooms in some schools, and since the responsibility for pupil assignment and teacher assignment was inherent in the superintendent's responsibilities, to look again and see if the assignment could be made that would bring about integration of some of the students in the schools. Also —

Q. Go ahead. I am sorry. I didn't mean to interrupt you.

A. Also in the general discussion we mentioned the fact that teacher desegregation should always be accompanied by pupil desegregation if we are going to address the problems which face us because of the segregation of pupils.

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Q. Mr. Harewood, since the HEW office had directed or had found that the system was in non-compliance with Title 6 of the Civil Rights Act of 1964, and the school system was about to commence a faculty plan of desegregation, what recommendation, if any, did you make with respect to timing of pupil desegregation?

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Yes. The recommendation which we made in reference to that act was that if it could not happen simultaneously with teacher desegregation, that as soon as possible after that pupils should be desegregated in order to address the problem which faces us.

Q. You say "address the problem which faces us." What problem are you speaking of at this point? I want to make sure I understand.

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A. The problem that the Dayton Public School faces because of the segregation of the pupils in the school.

Q. All right. You recommended that they proceed — the pupil and faculty desegregation proceed simultaneously, if possible, or if not, shortly thereafter?

A. Yes.

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Q. You understand, Mr. Harewood, I am not asking you to tell me what is right or wrong about segregation, but I am asking you to deal with mechanics if you will. That is probably an unfortunate word. Will you try and answer the question in that context?

A Mechanics?

Q. What was the object of the faculty decision? What was the goal to be accomplished in a narrow sense, if you will?

A. So that we would no longer have schools which are identifiable by race because of the composition of the student population or the faculty population or the administrative assignments.

Q. Well, did your recommendation that the time be simultaneous based upon an evaluation as an administrator or whether or not this could be accomplished solely with faculty desegregation?

A. Yes.

Q. Did you think it could be accomplished solely by the faculty desegregation?

A. No.

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THE COURT: Mr. Harewood, do I understand what you are saying is that assume that a school had a completely integrated faculty but totally or race or the other as students, it would still be a racial identifiable school?

THE WITNESS: Yes.

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[R. I. 604, Vol. 6] Q. Now, the resolution which you have in your hand, and particularly Step 2 as it is set forth there, would that have had the effect of doing what you had originally recommended in terms of pupil assignment in the Dayton School System?

A. Yes.

Q. I am sorry, I didn't hear you.

A. This resolution would have, yes.

Q. All right. And the resolution adopted in January, what effect did it have in terms of pupil assignment?

A. It restored the original boundaries which was not in line with the recommendation.

Q. And what does that do in terms to pupil attendance in the public schools in Dayton by restoring the original boundaries?

A. It resegregates them to the original condition which existed before this. We have black schools, we have white schools; schools in lower economic areas, and some in the other areas.

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[R. I. 608-609, Vol. 6] Q. Now, to go back to just a few points in your testimony, I understand that you were at Dunbar from 1938 to 1954; is that correct?

A. Yes.

Q. It was during the period from 1943 to 1948 that Dunbar became integrated into the City Athletic System; is that not correct?

A. 1948 and '49, they became, those two years.

Q. Didn't they start with training in '43, or do you remember?

A. Probably, yes, sir. I was speaking of the major sports. There may have been some activity in sports, yes, sir.

Q. But the two major sports are, of course, basketball and football in Dayton; aren't they?

A. That's right.

Q. In 1948 Dunbar became completely integrated into the City Basketball Leagues?

A. Yes, that's right.

Q. Then the following fall it became completely integrated in the City Football Leagues?

A. That's correct.

Q. And that has been the situation ever since; has it not?

A. That's right.

Q. You indicated that as a counselor at Dunbar from 1949 through 1954 you visited the area schools that would potentially feed children to the Dunbar High School?

A. Correct.

Q. In those days, and up to 1962 I think it was, Dunbar was an optional school; was it not?

A. Yes, sir.

Q. In other words, a child anywhere in the City System could elect to go either to the high school in his neighborhood or could elect to go to Dunbar?

A. Yes.

Q. The only other school with a city-wide attendance district at that time was Patterson High School; wasn't it?

A. Yes.

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[R. I. 611, Vol. 6] Q. The children who had been in class during that school year up until the time the school year burned down were transferred with the schools intact to these various predominantly white schools?

A. Yes.

Q. Then it was the start of the school year the following fall when those students became integrated into the other classes existing at those white schools; isn't that right?

A. In some instances some of them did it right away. Some waited. Some didn't do it until the next fall.

Q. How much time was left to complete the school year class that those children had with their teachers at Edison when the Edison School burned down?

A. I am not sure of the exact date, Mr. Greer, and the year when that happened.

Q. It was sometime in the spring?

A. In the spring, yes.

Q. Wasn't it a month or two before school was due to let out?

A. That's right.

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[R. I. 778-780, Vol. 7]

(Thereupon, the following proffer was made into the record by Mr. Diamond out of the presence of the Court:)

Mr. John Harewood, if permitted to answer whether it was educationally justifiable to segregate the children from the Edison School for the last six weeks of school to white schools would have testified as follows: From his experience as an elementary principal, second curriculum coordinator and second local chief administrative officer of the school system, would have testified that there was no educationally justifiable reason for segregating these children in the classes intact with their black teachers in otherwise virtually all-white schools.

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If permitted to testify with respect to the reasons for his recommendations with respect to faculty and pupil desegregation, Mr. Harewood would have testified as follows: First, the

faculty and pupils should be desegregated simultaneously or in as close coincidence as possible.

Second, that from his experience with the patterns of segregation and discrimination directly resulting from and being opposed by the Dayton Public School System and its accommodation of the white community's hostility to association with blacks on an equal basis, that when pupil desegregation was not made part of faculty desegration it was a symbol of the fact that the white community was still hostile to and unwilling to accept pupil desegregation.

If permitted to testify to the reasons for the January 3rd, 1972 action of the Board in reimposing segregation and redrawing every boundary in the school system which had the effect of establishing the substantial duality in pupil populations on a racial basis that is now present, Mr. Harewood would have testified that such action was merely the most overt act of discrimination and segregation by School Board action; and further would have testified that such overt act was necessitated because of the Board's decision on December 8, 1971 for the first time to come to grips with its own responsibilities to eradicate the patterns of discrimination and segregation which it had caused in substantial part for the past 50 years.

Mr. Harewood further would have testified that faculty desegregation given the history of identification of schools as black or white, and intentional tailoring of schools to serve white pupils or black pupils by the racial pattern in faculty assignment would not disestablish the racially dual system of education imposed by public school authorities.

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J. TESTIMONY OF ELLA LOWREY.

[R. I. 620-631, Vol. 6] Q. And where did you teach?

A. Garfield Elementary and Wogaman Elementary.

Q. All right. While you were a student in the system, did you become familiar with the Garfield Elementary School?

A. No, I did not.

Q. When did you first become aware of the Garfield Elementary School?

A. When I met Miss Louise Troy who was teaching there.

Q. And do you know under what circumstances she was teaching physically? Was it in the main building or elsewhere?

A. I knew she was teaching a class of first and second grade black children in the brick building right at the rear door in a classroom there.

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Q. Can you give me the approximate date?

A. Well, I would say this was just before the flood years.

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About 1912 or 13.

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Q. And she was teaching in an all black class and Mrs. Troy is black?

A. Yes.

Q. In the brick building at that time?

A. Yes.

Q. Do you know what happened to that class thereafter?

A. I lost track of what she was doing because I finished high school and started going to Dayton Teachers Normal and I lost track of her until I finished Dayton Teachers Normal and went to teach myself.

Q. That was in 1918?

A. Yes.

Q. And when you went to teach Garfield, where were the black students being taught?

A. In a two-story frame building with four rooms that

was a converted four-room house, two rooms down, two up with a stairway in the center.

Q. Were there any black students in the brick Building?

A. Not at that time.

Q. And were the teachers as well as the students black in the frame building?

A. All of us were black.

Q. Can you tell me what happened in the way of growth of for want of a better term I will call it the black annex to the Garfield School? Did you have an increase in enrollment during this period of time you were teaching?

A. When I went to do my practice teaching there where all the black Normal School girls went, there were four classrooms, a first and second grade in one room, third and fourth in one room, fifth and sixth in one room, seventh and eighth in one room. The classes were very large running about 50 children.

Q. Is that 50 children to one teacher?

A. To one classroom and one teacher. The next year, in 1918, that summer, they put up a two-room portable frame building with big stoves in it to heat them and I was hired along with another young woman to take a single second and third grade. I had third. The other girl had second, and this relieved the double classes in one room.

Q. Now, you taught –

A. At that point in time, that made six black teachers with six black classrooms.

Q. You were teaching in the portable portion of the building; it that correct?

A. Yes. The brick building sat here (indicating), here was the big yard (indicating), here sat this house (indicating), and on the other side of that was the frame, the two-room frame building.

Q. Were your classes large at that time?

A. At that time, when I began, I think I must have had about 25 or 30 children.

Q. Did there come another expansion in enrollment of children in the annex?

A. Yes, and it happened very fast. I would say it was due to the fact that after the flood, blacks moved out of the inner city proper, as we term it now, going west to go up high out of the flood territory where we had had the flood, and they were moving fast into the west side, further west.

Q. Was there another addition built to this annex?

A. We stayed in this small frame, I can't tell you how many years, but being very fragile, the building being very fragile, it was soon delapidated, in bad condition. The walls were bad; the windows were bad and broken out, and the heating unit became bad.

Then they build what I would call a permanent building directly behind this frame house. I say permanent because the floors were concrete, there were toilets in the basement; furnaces in the basement, an iron stairway to come up from the outside into the building. That was for four rooms.

Then the two-room portable was torn down. At that point in time then we had eight black classrooms with eight black teachers.

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Q. You say '21 and '22, you mean the years?

A. Yes, and at that same time the white teacher in the brick building with all white children had 20 children and I had 42. There was no effort made to equalize our classes. I kept 42 and she kept 20.

Q. Were you there in 1927 at the time the Reese case was filed?

A. Yes, I was.

Q. You were teaching still in the annex or the wooden building; is that correct?

A. Yes, I was, and Mr. Reese didn't like this thing, and he said he would not send his children there. They would not permit his children to go into the brick building, and he said he would not send them across the river to Central

School. He would sue the School Board first, and he kept his children at home.

Now the School Board at that time, not knowing what was going to happen, hired we eight people on a day-to-day substitute basis in September.

Q. You say eight people?

A. Eight teachers. There were eight black teachers of black classes.

Q. Where did they hire you as substitutes? You had been hired previously?

A. Yes.

Q. Where were you hired as substitutes on a day-to-day basis?

A. They told us that they didn't know whether we would be there after the case was settled or not. If the case was settled and they had to admit black children to the white classes in the brick building, then there would be no reason for us to be there, we were told.

Q. You would not be permitted then to teach the white children?

A. No. This is what we were told.

Q. The case was finally disposed of. Were you then given contracts?

A. We were given contracts and given the retroactive pay that we lost from September until December.

Q. Did you know what happened to Mr. Reese's son?

A. He came on to school and went to the classes in the brick building.

Q. How did the black children get into the brick building after that?

A. They had to go to the administration building, the parents had to go and make a special request that their child be admitted to this brick building, and a little later in time, shortly after that went on for a while, people objected so to it, then they were permitted to bring their child to Garfield School and asked permission to have their child entered in the brick building, but the parents had to come into it.

Q. And ask the principal?

A. They had to ask the principal, "Place my child. I want my child placed in the brick building."

They had to come and so specify.

Q. If they did not do that, and they lived in the Garfield zone, they would have been assigned to the black annex; is that correct?

A. They were assigned to the black teachers in the black annex and the black classes.

Q. Did the black population continue to grow and did in turn the number of white pupils available in that area decrease?

A. There came a time in the late '20's when we just had more children than we could handle and the weight seemed to be in the fifth and sixth grade area. At that time one black teacher was hired and she was given a room right at the rear door of the brick building. She was the first black teacher to work in the brick building at this time.

Q. Other than Mrs. Troy?

A. Mrs. Troy, in the meantime, was over in the frame building with us. Now that was in, I would say, about '27 or '28, this was, and then at the time of the depression in '32 —

Q. Excuse me. Let me interrupt you. This black teacher by the back door, was she teaching an all-black class?

A. An all-black class of fifth and sixth grade children.

Q. All right.

A. Then that was the only teacher for the black children in that buildinng up until the time during the depresson when married women teachers whose husbands could support them had to go home, and I was one of those that went home in '31 and '32. When I went back in '32 and '33 there was no place for me. We had had somewhat of a disturbance about these people being let out, and we were all assigned back to work. There was no place for me, because by that time another teacher had my class.

Q. Another black teacher?

A. Another black teacher had my class, and they had been told – the Board had been told – assign all those teachers.

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The Board of Education then said that I would – well, now, how do I say that – we had a court case out of it, and the mandate was, "Retire these teachers."

Wouldn't that be to the Board?

Q. Go right ahead.

A. Where was I before I was so rudely interrupted?

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So then we went back to work. That's always been a sore spot with me, my being let out that one year, interrupting my service, you know – so when I went back to work there had to be a place made for me, so to speak, so then 18 children who were slow, troublesome, worrisome, bothersome, generally disliked, were called from their groups and given to me in an ungraded class. There was no place to put me excepting in the brick building in a room that had formerly been the principal's office, a little cubbyhole upstairs, and this mixed black fifth and sixth grade and my black class upstairs were the only two black classes in the building.

Q. Let me just make it clear. When you say mixed, you mean mixed grades, not mixed pupils?

A. Yes, I do. No. No. No. No. No. These were all black children, and I had about 18 of these in this little room upstairs in the building. All the rest of the building was white excepting we two black teachers and these two classes of black children.

This continued until about, as I remember now I was in that room about two years, which would make it about '34 or '35. We had two little white children left in the building. Now these ten white teachers were maintained through all of this, and then as our classes became overflowing with black children, they were placed in the white teachers' rooms, but not until there was no place for the child to sit in the room.

Then when there were only two little white children left in the building, the white teachers were all reassigned. The black teachers were put in these rooms. We had at that point in time eight and ten – eight and two, that was ten – and six white teachers remaining in the building at this time now teaching whites, a few whites, three and four in a classroom, and all the rest of their children were black.

Then, as soon as there were only two whites left, there were black teachers assigned to these rooms, and a black principal was assigned, and that was about '35, as I recall.

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[R. I. 635, Vol. 6] A. Then I resigned. Then I was out of the system six years, and then I went back and continued on until 1953. When I went back I went to Wogaman School and I stayed there twelve more years doing 40 years service in all in Dayton, and I never taught a black child in all – pardon me. I never taught a white child in all that time. I was always in black schools, black children, with black teachers.

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K. TESTIMONY OF MARTIN E. SLOAN.

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[R. I. 667-670, Vol. 7] A. Yes, sir. This is the 1971 annual report of the President as required by the 1968 Housing and Urban Development Act. At page 26 the President states, "Residential separation of minorities was and is another characteristic of the social environment which has been influenced by Federal Housing Policy. Until 1949 FHA officially sanctioned and perpetuated community patterns of residential separation based on race by refusing to insure mortgages in neighborhoods not racially homogeneous. The effects of this policy have persisted for many years after its reversal and are still evident in metropolitan areas today."

Q. Mr. Sloan, directing your attention to – coming back to the FHA multi-family program, the public housing pro-

gram, does it require any certification before a project may be built or expanded from the local school agency?

A. Yes. It is among the requirements by the Federal Public Housing Authority –

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A. Among the conditions which are required by the Federal Public Housing Authority is an assurance that there are or will be school facilities adequate to accommodate the children who will be living in the public housing project, and this is a condition before approval is given. And one way that this assurance is given is through a letter or certification from the local educational agency.

Q. If such a certification is not made in some form or fashion can the project be built?

A. No, it cannot. Federal approval will be withheld.

Q. Mr. Sloan, let me give you a hypothetical – what may be a hypothetical situation. Assume a proposal is made to build a Federal Housing Project in a period of time when the agency did require segregation in the housing – that it true, it did require that, the Federal Public Housing Authority?

A. Yes. Many localities did require it.

Q. All right. Assume the proposal is to locate a public housing project with that given, that it will be segregated in an area that is on that map red, and therefore predominantly black, if the school authority refuses to provide school space in that area on any ground, it cannot be built, is that correct?

A. That is correct.

MR. GREER: I will object, your Honor. This isn't laid with any premise in the Dayton School System.

THE COURT: Objection overruled, Mr. Greer.

Q. Now, assume the School Board advised the housing agency that we will not build or add onto school space in this area because your policy is one of segregation and that will result in, because of the racial composition of the area, an all-black school; however, if you build it in an area where

there are white children, white residents, then we will provide school space regardless of what your tenant selection policy may or may not be, could the project then be built only in the area where the school space could be provided?

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A. That would be right. So far as the Federal Public Housing Authority is concerned, so long as there are going to be adequate school facilities which will accommodate the children, that is the locationn they will approve.

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[R. I. 672, Vol. 7] Q. Now, I take it, Mr. Sloan, that from your limited understanding, the school authority cannot tell the housing authority what their tenant assignment policies should or should not be, is that correct?

A. As far as the Federal –

MR. GREER: I will keep my continuing objection to all this questioning.

THE COURT: I assumed that, Mr. Greer.

A. As far as the Federal Public Housing Authority's position is concerned, until 1962 the kind of tenant assignment policy adopted by local public housing authority was entirely up to the local public housing authority. Whether it wanted to adopt a segregated tenant assignment policy or an integrated tenant assignment policy was entirely a matter for local decision.

Q. As far as you know, the school authorities could not dictate the tenant selection?

A. As far as I know, the school authorities could not.

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[R. I. 674-688, Vol. 7] Q. Mr. Sloan, just to make it perfectly clear, may a Federally assisted, through the local housing agency, project be built if the school authorities decline to provide the school space?

A. No, they may not. Unless the Federal Public Housing Authority can receive assurance that there will be school facilities to accommodate the children who are living in the project, they cannot approve construction of that project. And if the school – local education agency does not give that assurance for whatever reason, then the project cannot be built.

Q. All right. Mr. Sloan, turning from public housing to Federally assisted multi-family housing, do you know whether or not similar assurances are required under those programs?

A. Yes. Similar assurances are required with respect to FHA assisted multi-family housing, subsidized housing for low to moderate income families.

I believe, but I am not absolutely sure, that similar assurances also are required for non-subsidized FHA assisted multi-family housing.

Q. To your knowledge, is any formal certification required for single-family assisted housing?

A. I am not sure, Mr. Lucas.

Q. But the underwriting criteria indicate evaluation of that, is that correct?

A. Yes. The adequacy of schools always has been and still is an important consideration that goes into the decision to approve or not to approve FHA assisted housing.

Q. As part of your agency's function to conduct hearings as charged by Congress, official records are kept, is that correct?

A. That is correct.

Q. All right. Has the agency conducted hearings at which the Secretary of Housing and Urban Development has testified in recent years?

A. Yes. In June 1971 we held three days of hearings in Washington, D.C., and among the witnesses was Secretary Romney of the Department of Housing and Urban Development.

Q. Are these proceedings recorded and records kept and maintained in the ordinary course of business of the agency?

A. Yes, they are.

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Q. Without any detail, except as the cross-examination may require, Mr. Sloan, would you refer to the hearings in which Secretary Romney testified?

A. This is –

Q. I am sorry, and indicate, first of all, the date and so forth of the hearings, and would you particularly reference any testimony by the Secretary to the Commission with respect to the present-day existence or non-existence of a dual housing policy?

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A. This is a copy of the hearing transcript, at which sworn testimony was taken from all witnesses. The hearings were held between June 14th and June 17th, 1971, and Secretary Romney was one of the witnesses, and the hearings were concerned with problems of denials of equal housing opportunity, which is why Secretary Romney was an important witness.

In one point in response to a question as to whether there still existed a racially dual housing market, Secretary Romney replied, and this is from page 244 of the hearing transcript, replied, "You don't have to prove through me that we have got a dual housing situation in the country. We have got a dual housing situation. We have got dual housing markets in practically every metropolitan area in the country."

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Q. Mr. Sloan, has your agency as part of its responsibility conducted studies of the various Federal statutes and Presidential orders which involved an attempt to eliminate this dual housing market?

A. Yes, we have.

Q. And this was an official study as part of the mandated duties of the agency, is that correct?

A. We have done a number of studies along that line. One a particular which we conducted in October, 1970, perhaps that is the one you are referring to, was entitled "The Federal Civil Rights Enforcement Effort," in which we evaluated the Civil Rights activities of more than 40 Federal departments and

agencies, and one entire chapter was devoted to the Department of Housing and Urban Development and other agencies having fair housing responsibilities. And since that report, which was published in October of 1970, we have done two follow-up reports to try to trace any progress that has been made in strengthening civil rights performance, and particularly in the area of housing.

Q. Did the Commission draw any conclusions as to the effectiveness or lack of effectiveness of those programs and statutes?

A. The Commission's conclusion was that the Fair Housing Laws were not being enforced with any strength; that the Department of Housing and Urban Development was relying for the most part on receipt of complaints as its principal mechanism for enforcing the Federal Fair Housing Law rather than taking affirmative action such as the performance of civil rights compliance reviews to determine for itself whether the law was being obeyed.

Q. One final question, Mr. Sloan. From your experience and your study of this field beginning with national banks and Comptroller of the Currency's office and assuming perfect enforcement of the statutory provisions and executive orders, do you have an opinion, sir, as to – let me ask you a preliminary question.

What is the rate of change generally considered in terms of housing, in terms of families moving in and out?

A. The best estimate that I have is that on the average families turn over houses, move from one house to another or one unit to another every seven years.

Q. All right. And do you have – I will get to my main question – an opinion as to how long it would take, assuming this perfect enforcement, to come to some sort of random distribution of the population in terms of race in the community?

A. My best estimate, and it is not a very optimistic one, is that it would be at least three and probably four generations before we could expect even with strong and perfect enforcement of existing fair housing laws, we could expect the kind of random distribution that you are talking about.

Q. Mr. Sloan, I show you a document dated June 8, 1971, entitled "Federal Policy and Equal Housing Opportunity. Are you the author of that document, sir?

A. Yes, I am.

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THE COURT: I am going to permit this to be offered as an item of evidence, Mr. Lucas, and we will give this a number. Your last number I think was 158. This will be Plaintiffs' Exhibit 159.

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Q. Mr. Sloan in what field of English literature was it that you had your education?

A. Elizabethan drama was my major.

Q. The material that I have just been handed marked Plaintiffs' Exhibit 159 purports to be an article which you wrote on June 8, 1971, is that correct?

A. It was a paper I prepared in specific connection with the Commission's hearing in Washington that I referred to earlier and was entered into the record.

Q. All right. Prior to examining you, I haven't had any opportunity at all to read or review this document. Is there anything of significance in it other than what you have already testified to?

A. I am not sure. It tries to trace succinctly key developments in Federal policy relating to equal housing opportunity. There are matters discussed in there that were not gone into in my testimony such as policies of Federal financial regulatory agencies and the mortgage lending institutions which they regulate, which we did not go into.

There is also discussion of several substantive housing programs which I didn't go into in my testimony.

Q. It contains no discussion I trust of the Dayton School Board, does it?

A. No, nothing specifically relating to Dayton.

Q. Does it contain any discussion of any School Board?

A. No, it does not.

Q. Have you ever been to Dayton?

A. Yes, I have.

Q. When and for how long?

A. Well, just a day, many, many years ago, while I was attending Ohio State University we traveled to Dayton.

Q. You came down to hear a jazz band or somthing?

A. Something like that.

Q. You haven't made any study in the Dayton area, have you?

A. No, sir, I haven't.

Q. I don't understand your testimony as to the question of assurances by local school boards that there will be school facilities available. Now, I thought I heard you say at one point in your direct examination that many localities did require this at one time?

A. Did require what?

Q. That the FHA be given assurance that school facilities would be made available?

A. Discussing the public housing program, the Federal Public Housing Authority, among the conditions which it requires to be satisfied before approval of any project, is that there will be assurance that there will be adequate school facilities to accommodate the children who will be living in that project. And in public housing the way in which that assurance is given is through a letter or certification by the local educational agency. Unless that assurance is given approval will not be given. That is so with respect to the Public Housing Program.

Q. Is it ever done informally or is there always a letter of assurance?

A. To my knowledge, there is always a written document giving that assurance.

Q. You don't know in particular of the practice that the FHA followed in the City of Dayton, do you?

A. FHA or the public housing? You are talking about two different programs.

Q. Any public housing?

A. I don't know about the specific practice in Dayton, but I do know about the practice which was required on a nationwide basis, and I can't see why it would be different in Dayton unless there is some particular reason why it would be a different practice in Dayton.

Q. Well, you haven't seen my documents or letters indicating the Board of Education of Dayton certified that there would be facilities available for this or that project, have you?

A. No, I haven't.

Q. Is the assurance to which you are referring not something required by FHA or the VA?

A. No. With respect to FHA, the same assurance is required, that is, that both the Federal Housing Administration and the Public Housing Administration of HUD, both are very concerned about the adequacy of school facilities to accommodate the children who will be living in these projects which they assist in financing, so the assurance is the same.

Now, when Mr. Lucas asked me, I said I wasn't sure whether the same assurance is required with respect to FHA assisted single-family housing. I would be surprised if it was not, but I am just not sure.

Q. Do you know where there are some localities where this asurance has been obtained simply by the people from FHA or the Public Housing Authority inspecting the area and finding out for themselves that there are school facilities available?

A. No, I don't.

Q. You don't know whether that might or might not be the practice?

A. I don't know with respect to FHA. It may be, but the typical plan in FHA was to receive insurance in the form of a letter, a written document.

Q. And over what period are you referring to?

A. The entire period of the operation of the program including to date.

Q. Right up until the present time?

A. Yes.

Q. It is your testimony however, is it not, that the school board or in your experience you have never found a situation where the school board had a choice in either the location or the tenant policy of any public housing project?

A. I don't know one way or the other. The Federal concern was in getting that written insurance and once it was obtained as to the relationship to the local education agency and the local public housing authority, that was something in which the Federal Public Housing Authority did not get itself involved. As to whether in a particular situation the local education agency could or could not say yes or no, the interest to the Federal Government was in getting that insurance and until it got it, no approval would be given.

Q. And all the Federal Government wanted to be assured of was that any child residing in a proposed housing project would have an opportunity to get an education; isn't that right?

A. That's right.

Q. Are you familiar with the Ohio Statute which provides that schools will be placed at such places as will be most convenient for the attendance of the largest number of students?

A. I wasn't until His Honor read that section of it.

Q. You are a lawyer from New York rather than from Ohio?

A. That's right.

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Q. To make sure there is no confusion, Mr. Sloan, you mentioned something about a local option. That option from the Public Housing Agency, it dealt with the question of tenant assignment; isn't that correct?

A. That's right.

Q. And not with whether or not it would be allowed?

A. That's right.

THE COURT: I have one or two questions, Mr. Sloan. Do you know of any example in any city where a school Board refused to grant such a certificate because of the segregation policies of the housing agency?

A. No, Your Honor, I don't, but neither the Commission nor I personally has ever actually inquired into that specific question. I would like to.

THE COURT: There is no evidence to your knowledge that any school board has ever done that; is that right?

THE WITNESS: Your Honor, I don't know of any such situation, but then it would be difficult for me to know.

THE COURT: Your inquiry into this issue has not included that determination?

THE WITNESS: That's right, sir.

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L. TESTIMONY OF HERBERT CARROLL.

[R. I. 695-696, Vol. 7] Q. And what has been the policy with respect to the student during this whole period who was attending another school for racial purposes, if you will, who had a disciplinary problem? What was the policy with respect to that student?

A. The policy was that he was to return to his own school.

Q. If he had a problem, say, at Meadowdale and his home school was Roosevelt, then he would be sent back to the black school program; is that correct?

A. That's correct.

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[R. I. 700-704, Vol. 7] A. Yes, it does.

Q. In terms of your curriculum?

A. It does.

Q. Do you know, or from your observation of the applications, is there a pattern of particular schools that white chil-

dren are applying for curricular transfers from, and is there any pattern to the schools they seek to attend?

A. Yes. Basically in most Roth High School – let me be more specific. Particularly the white youngsters in Roth High School are seeking Meadowdale and Stivers Schools for latin and power mechanics. That seems to be the reason why they want to leave.

THE COURT: Excuse me. Which high school are they seeking to leave?

THE WITNESS: They are seeking to leave Roth High School, Your Honor.

Q. Roth, Meadowvale and Stivers; is that correct?

A. Yes.

Q. What about from Roosevelt; are there any transfers from Roosevelt?

A. Yes. Basically the transfers – you are talking about black students now?

Q. I am talking about white students.

A. There aren't any white students at Roosevelt.

Q. What about from Stivers; is there any pattern of transfers from Stivers?

A. The pattern of Stivers is from schools of Wilbur Wright or Belmont, and they are seeking German and latin.

Q. Is there a school with a humanities course that a number of students are seeking transfer to?

A. Yes, there is a humanities course at Meadowdale High School which has been used for transfers also.

Q. That's not a required subject; is it?

A. No, it is not.

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Q. Mr. Carroll, as I understand it you started with the Dayton School System October of 1957; is that correct?

A. Yes.

Q. That was the same year that you first applied to the system for a teaching assignment?

A. That's correct.

Q. You didn't serve any apprenticeship as a substitute teacher; did you?

A. No.

Q. The freedom of enrollment idea as I understand it from your testimony, was a suggestion which you had made?

A. No, it was not. It was one I had to implement.

Q. You implemented it and your chief work in the system in the last few years anyway has been assisting special education students to try to avoid dropouts and that sort of thing; hasn't it?

A. That's correct.

Q. As I understand the freedom of enrollment plan, there are three priorities; are there not?

A. Correct.

Q. The first in keeping with State statute on the provision of schools in the attendance district of the child gives a student a first priority to stay in his own neighborhood school?

A. That's correct.

Q. The second priority is an educational priority that if there is a course he can't obtain in his own neighborhood school, he can request a transfer for that purpose?

A. Yes, sir.

Q. You have indicated that students from Roth have sought to go to Meadowdale or Stivers for latin courses or power mechanics courses?

A. That's correct.

Q. What's a power mechanics course?

A. It is a course in machinery which is not offered at their present school.

Q. That I assume requires the kind of equipment that would be expensive to reproduce in every school of the system?

A. I wouldn't know. I don't know.

Q. Then of course, Stivers is an integrated school, is it not?

A. Stivers has some black students in it.

Q. In fact, as of today there isn't any high school in the Dayton system that doesn't have some black students in it; isn't that correct?

A. There are black students at most all high schools.

THE COURT: Excuse me. Most high schools or all high schools?

THE WITNESS: Excuse me; all high schools, there are some black students.

BY MR. GREER:

Q. There have also been transfers of students from Stivers to Wilbur Wright or Belmont for educational purposes?

A. Yes.

Q. There have been transfers of black students from Roosevelt to other schools for educational purposes; have there not?

A. Yes.

Q. Has there been any pattern of black students transferring from schools for the second priority, educational courses?

A. Very seldom. There have been some, yes, sir.

Q. What have been those transfers?

A. Those transfers have been whereby the youngster has known a particular course that he wanted, and he would mention — an example — a course let's say, humanities. He would really want humanities, to go to a course, but he could also go according to racial balance.

Q. And the third criteria, after the attendance zone and the educational criteria, if any student can go to any other school if there is capacity for him and if his attendance at that school would improve the racial balance in the school; isn't that correct?

A. That's correct.

Q. This is a policy that has been in effect in the Dayton School System since September of 1969?

A. Correct.

Q. The upswing in the system in this current school year is attributable to the fact that these students are given free transportation; isn't that correct?

A. Yes.

Q. Up until this school year, because of financial matters,

if they were enrolled in freedom of enrollment, they had to get to the school they wanted to on their own pocketbook?

A. Yes, sir.

[R. I. 713, Vol. 7] A. 716 high school youngsters.

Q. And in addition to those 716 students, there were 625 elementary students?

A. That's true.

Q. And if we look to the non-minority races over the periods that we are talking about, there were 23 students that transferred under the freedom of enrollment program in the elementary and middle schools; is that right?

A. That's true.

Q. And 89 in the high schools?

A. That's true.

Q. Now, some of these transfers would be from predominantly black schools to predominantly white schools, would they not?

A. That's true.

Q. And there are a few that are from predominantly white schools to predominantly black schools?

A. Correct, yes.

Q. The transfer depends on the choice of the student and the available space?

A. That's true.

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[R. I. 729, Vol. 7] Q. In your administration of this program, you haven't made any distinction between students who apply under the second priority for educational reasons as to whether they are white or they are black; have you?

A. The guidelines state that if one transfers under the second priority, that they will transfer, and all except a few of those have been white students.

Q. But if a black student transfers under the second priority, he is treated in exactly the same manner as the white student who applies under the second priority; isn't that true?

A. Yes.

M. TESTIMONY OF JAMES R. CALDWELL.

[R. I. 731-735, Vol. 7] Q. Would you state your name, please?

A. James R. Caldwell.

Q. How long have you been a resident of Dayton?

A. All my life.

Q. Where did you go to college?

A. Tennessee State University.

Q. During what period of time?

A. From '50 to '54 – '49 to '53.

Q. What kind of degree did you get from Tennessee State?

A. B.S.

Q. Did you get a teaching certificate?

A. Yes, I do.

Q. What kind of teaching certificate?

A. Health and physical education biological sciences.

Q. High school letter?

A. Yes, sir.

Q. Did you play football at Tennessee State?

A. Yes, I did.

Q. Did you apply for a job in the Dayton School when you graduated from Tennessee State?

A. Yes, I did.

Q. What happened?

A. When I made application for a job in the Dayton Schools, I was told that the only openings that they might have would be at Dunbar, and at the present time they didn't have any.

Q. So what did you do?

A. I left and started playing professional football, and all season I was teaching in the State of Tennessee.

Q. Where did you play professional football?

A. The Chicago Bears and Calgary Stampeders.

Q. Where did you teach?

A. Davidson Academy in Tullahoma, Tennessee and Booker T. Washington in Chattanooga, Tennessee.

Q. Were you a coach at those schools?

A. Yes.

Q. What sports did you coach?

A. Football, basketball, and track.

Q. When did you return to the Dayton area?

A. In the latter part of '59.

Q. Did you apply for a job with the Dayton Public Schools?

A. Yes.

Q. What happened?

A. They said they had no openings in the health and physical education department.

Q. So, what did you do?

A. Went to Hamilton to set up the school program at the Juvenile Court under the direction of Dr. Dickey.

Q. Did you return to the Dayton Public Schols?

A. Yes, I got a call one evening asking me if I were interested in taking a job at Roosevelt as a science teacher and a football coach.

Q. Was that as a head football coach?

A. No, as a line coach assistant.

Q. Did you accept that position?

A. Yes, I did.

Q. How long did you remain at Roosevelt?

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A. Until '68.

Q. During that period of time could you just tell us in rough terms what happened to the faculty and pupil composition at Roosevelt?

A. When I first went to Roosevelt, I guess it was about 60-40, and at Third Street at one time was the dividing point as far as blacks and whites are concerned, and as the blacks continued to move into that area, the blacks became more dominant in Roosevelt.

Q. What happened to the faculty composition?

A. It became more dominant too.

Q. During that period of time did you remain as an assistant coach at Roosevelt?

A. Yes.

Q. Were you ever offered a position as a head coach?

A. I was promised a position as head coach at one time, but later it was changed.

Q. You did not get it?

A. No.

Q. Did you also coach freshman football?

A. Yes, I did.

Q. What were the records of your team?

A. I had the best record in the history of Roosevelt. I lost no games and only one team crossed the 50-yard line for one play.

Q. In 1968 where did you go after you left Roosevelt?

A. To Roth High School.

Q. What was the pupil racial composition at Roth High School at that time?

A. I guess it was about 60 percent black and 40 percent white.

Q. What position did you take?

A. As a teacher and coach.

Q. Were you a head football coach?

A. No.

Q. In 1969 did you take another position?

A. Yes, as student community coordinator.

Q. What is your present position?

A. Assistant principal at Roth.

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Q. Mr. Caldwell, as I understand it when you secured a job in the Dayton System, they called you rather than you calling them; is that right?

A. Yes.

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N. TESTIMONY OF DORIS BROWN.

[R. I. 762, Vol. 7] Q. Will you state your full name and your occupation, please?

A. I am Doris Brown, Principal at Miami Chapel School.

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[R. I. 765-769, Vol. 7] Q. What is your employment history?

A. I graduated from college in 1942. I started working in a small town, Georgetown, South Carolina, and during the War years I wanted to make a more direct contribution to the War effort, so I went into Government work. I came to Dayton at that time.

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Q. Did you seek employment at that time with the Dayton School System?

A. Yes, I did. I decided to go in and talk with them to see what the possibilities were, and at that time I was told –

Q. Can you give me the year please, approximately?

A. Approximately either '55 or '56.

Q. All right.

A. I was told that I would have to substitute and I figured no way, you know. I would be losing income to go into the school system in the first place.

Q. That is if you were employed full time?

A. If I were employed with the school system. I did lose income when I went to the school system because I was making more with the Government than when I was employed at the school.

Q. And did you substitute at all?

A. No, I didn't.

Q. All right. Did there come a time when you obtained a job with the Dayton School System and can you tell me how that came about and where you were assigned?

A. When I had an opportunity to talk with the person who

interviewed me and personnel, they indicated that there were vacancies, a few possibilities and the schools names were Willard, Wogaman, and Miami Chapel.

Q. Were these black schools?

A. Yes, black.

Q. And did you accept an assignment?

A. I accepted the assignment at Miami Chapel.

Q. Did you receive any rating in terms of your qualifications during your period of time at Miami Chapel?

A. Yes. I was told that it was one of the best ones that had ever been given by that administrator.

Q. What kind of rating did you receive?

A. Excellent if you want to call it that.

Q. Mrs. Brown, are you related to Herman Brown who has testified in this court?

A. No.

Q. And at Mr. Brown's suggestion, did you contact the Personnel Office in the school system concerning a vacancy in the position of assistant to Mr. Royer?

A. Yes, I did.

Q. Let me ask you first of all did Mr. Herman Brown indicate to you what he understood the qualifications that were being sought were?

A. Yes.

Q. And what were they?

A. When he went for an interview, he did tell me that they wanted a woman, so I went.

Q. And did you have an interview with Mr. Royer?

A. Yes, I did.

Q. And what were you told?

A. Well, that no decision was made; in other words, it was just we will consider you and we will let you know.

Q. All right. Did they tell you what sex they were looking for? Did he indicate that to you?

A. No.

Q. Did you subsequently obtain a position in the central office?

A. Yes. I was offered a job as interviewer for the Special Assistance Program.

Q. That would be a Federally funded program?

A. Yes.

Q. Did you take that position?

A. After thinking about it, I did take it.

Q. And was this the same kind of position that you had had in terms of overall responsibility that you had been applying for since the War?

A. Really no.

Q. You made substantially less, did you not.

A. Yes.

Q. And it was limited to Federal programs?

A. Yes, in the basement of the building.

Q. All right, and did your responsibilities include all schools in the system or only those with Federal programs?

A. Only the Federal.

Q. Was there a concentration in terms of employment there in terms of black or white for the Federal programs?

A. A high percentage of black.

Q. Primarily your job that was interviewing black applicants; is that right?

A. Generally speaking, that's the way it was.

Q. And Mr. Royer had a higher position with more general supervision than you did; is that correct?

A. Yes.

Q. I believe, in fact, the minutes of the Board of Education reflect that you were appointed to your position on the same date he was appointed to his; is that right?

A. Yes.

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Q. How long did you stay in that position, Mrs. Brown?

A. About a year and several months.

Q. Why did you leave that position?

A. I was offered a position as Principal of Miami Chapel School.

Q. And did you prefer that position at Miami Chapel?
A. Yes.

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O. TESTIMONY OF GRACE TOLES.

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[R. I. 741, Vol. 7] Q. Would you state your name please?
A. Grace Toles.
Q. Where do you reside?
A. Dayton, Ohio.

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A. Yes, I am.
Q. Are you presently employed?
A. Yes.
Q. By whom?
A. Dayton Board of Education.
Q. In what capacity?
A. Assistant Principal at Longfellow Middle School.
Q. How long have you been in Dayton, Mrs. Toles?
A. Fourteen years.

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[R. I. 743-747, Vol. 7] Q. By whom were you interviewed to be employed as a teacher or as an employee of the Dayton Public Schools?

A. Homer Royer.

Q. Do you recall the year that you were first interviewed?

A. In the summer of 1957.

THE COURT: Excuse me. Was that '57 or '67?

THE WITNESS: '57.

BY MR. JONES:

Q. And what were you told by Mr. Royer with regard to your desire to become an employee?

A. He told me that there were no vacancies in my field and his advice to me was to retrain for the elementary.

Q. In what respect did he say there were no vacancies?

A. Well, he said there were no vacancies for black teachers in the high school.

Q. Did he make a suggestion to you?

A. He suggested that I retrain if I was interested in anything.

Q. What was your response to that?

A. That I had trained for high school and I was not interested in retraining for the elementary level.

Q. Did you have a later occasion to talk with Mr. Royer?

A. There was an article in the paper later that they needed teachers, and I asked for an interview and I was told to come in again.

Q. And did you talk to Mr. Royer at that time?

A. Yes.

Q. Did he ask any questions of you with respect to your desires?

A. Well, he asked me how did I feel about going into an all-white school to teach, and I explained to him that I was interested only in teaching children. My position there would not be to socialize.

Q. Would you tell us what school you were first assigned to after first being employed?

A. Roosevelt High School.

THE COURT: What year were you employed?

THE WITNESS: 1957 in the fall.

THE COURT: Then this interview did result in employment?

THE WITNESS: Yes.

THE COURT: Thank you.

BY MR. JONES:

Q. You were employed to teach at Roosevelt High School?

A. Yes.

Q. Do you recall the number of faculty members there were at Roosevelt at that time?

A. 121.

Q. Now, of that number, do you recall how many teachers were black at the time you went there?

A. There were two prior to my being hired and there were four the year that I was hired. There were six blacks at the time.

Q. How long did you stay at Roosevelt?

A. Thirteen years.

Q. Can you tell us what the student population was at the time you went there?

A. It was predominantly white. I would say about 93 percent white.

Q. What was it at the time you left?

A. 99 percent black.

Q. What was the faculty composition, if you recall, just prior to your leaving, a year or two prior to your leaving?

A. We had a 70-30 ratio, and I am not certain of how many whites were there.

Q. Prior to that time you say when you went there, there were two black faculty members?

A Yes.

Q. And four came with you?

A Yes.

Q. At what point would you say the faculty had the highest number of black teachers?

A. I would say about midway '67. I would think that more blacks – as the population of the student body changed, the staff changed.

Q. Would you know approximately what that percentage would have been?

A. I would say possibly about 70 percent black.

Q. Were you able to observe the process under which the faculty changed from predominantly white when you went there to 70 percent black?

A. As the student body changed, I think I said before the faculty changed, and there were two high schols that were opened, Meadowdale and Roth, and I noticed a change after these schools were staffed.

Q. To what do you attribute that change in the student population after these two schools were opened?

A A number of things. The area was changing as far as housing is concerned. The other thing, the white students that were in the area were allowed to go to Colonel White or Patterson. Colonel White was in the optional area.

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[R. I. 749-750, Vol. 7] THE WITNESS: As I said, academically I noticed that there was a change as far as what was being taught and how it was taught.

BY MR. JONES:

Q. Can you describe that in a little more detail?

A. Yes. We used to rate on tests and we taught toward this. It was decided by committees within the particular disciplines that we didn't need to worry about this any more because students had so many deficiencies that we would only teach toward correcting the deficiencies rather than trying to compete as far as city or state tests.

Q. With regard to the physical tools and equipment in the schools, did you notice any change take place?

THE WITNESS: I noticed that as teachers moved to other schools, the materials that they had accumulated that really belonged to a particular school in the district – if you have Roosevelt materials, they belong there– but they suddenly disappeared and they were not, you know, replenished.

Q. Did you have occasion to observe the teachers who replaced those who were transferring out?

A. Yes. In may particular field seemingly the ones that were sent in were weak, oftentimes they were teachers that had ben assigned to other schools and had not made it and they were transferred there.

P. TESTIMONY OF LELIA I. FRANCIS.

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[R. I. 791-792, Vol. 7] Q. Are you familiar with the Garfield School area?

A. I am familiar with the Garfield School and the Willard School. Willard School is where by daughter went to school when I first came to Dayton, and it was a predominantly black school.

Q. Now, when you lived in the Garfield area –

A. I lived – not Garfield, Willard.

Q. Willard?

A. Yes.

Q. Did you know of any bussing of children out of there?

A. Definitely. I had occasion to talk to a woman who lived in an apartment above a store at the corner of Germantown and Summit. Willard was on the corner of Germantown and Summit. She wanted her child to go over there to school.

Q. Was she black or white?

A. She was a white woman. And they refused to let her child go just across the street, and a bus picked her up and carried it out from Summit and Germantown.

Q. You say Willard or Wogaman?

A. That is Willard.

Q. O. K.

A. Willard.

Q. Did you know of any other students, white students, who were bussed out of particular school areas?

A. The children from – when Wogaman changed, why those children were bussed out of the Wogaman district.

Q. When you say "those children" you mean the white children?

A. The white children were bussed out of the Wogaman School District.

Q. What was the effect of the urban renewal policy in terms of residents of blacks in East Dayton in the early years?

A. Well, the urban renewal program became known as the black removal program. They removed all of the black people from near the center city of Dayton, Ohio. You will not find one black person in that section now.

And the same thing happened in the east end. They moved all of the little pockets of black people who were out there. Why, they encouraged them and made it possible for them to buy property in the West Dayton area.

Q. This was true also of the public housing where they were building white projects in East Dayton, is that right?

A. Right.

Q. Did the relocation agencies actually relocate black people in West Dayton?

A. Absolutely. Absolutely.

Q. TESTIMONY OF DAVID GEORGE CARTER.

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[R. I. 795-797, Vol. 8] Q. Would you state your name, please, sir?

A. David George Carter.

Q. What is your present position?

A. Service Unit Administrator with the Dayton Public Schools.

Q. Who do you work under?

A. Mr. John Harewood, Assistant Superintendent in charge of administration.

Q. How many other service unit directors are there?

A. Two.

Q. What is your basic responsibility?

A. I have the administrative responsibility for 25 schools, three special programs. The special programs are Model Cities Education Component, Project Emerge, which is a Title 8 dropout provision program, and the COP program.

Q. Are you also in charge of a set of schools?

A. The schools, yes, 25; four high schools and twenty-one elementary and middle schools.

Q. In some other school systems, might this be called a regional superintendent?

A. Yes, and if you are in Detroit they would have district superintendents; if you were in Philadelphia, they would have district superintendents; if you were in Madison, Wisconsin, they have unit directors, the same as we have in Dayton, Ohio.

Q. When did you go to high school and where?

A. 1957 through 1961, June of 1961, Roosevelt.

Q. When you arrived at Roosevelt High School, what was the pupil population?

A. Approximately 21, maybe 2200.

Q. What was the racial composition?

A. Maybe 40 percent black, or 35 percent black, something like that.

Q. During the four-year period that you were at Roosevelt High School, what was the change in both the total enrollment and the pupil racial composition?

A. Okay. The enrollment during the time I was there was basically, I guess about the same, 2100 or so. I guess several interesting things happened when I arrived at Roosevelt. There were approximately, I can remember seeing five black teachers. Okay. Maybe there were a couple more.

Each year the number of black teachers increased, but also each year the number of white students decreased.

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[R. I. 797, Vol. 8] Q. During this period of time of transition, do you have any idea where the white students attended school?

A. Yes. I guess, if we are talking about '57-58, after my freshman year, it is rather difficult to say, for some individuals that I went to elementary school with at Addison never arrived at Roosevelt, which leads me to believe one of two things – and they still stayed in Dayton; they resided the same

places, in Summit Courts, which is now called Lower Dayton View, if you are familiar with Dayton, right off of Negley.

Black students that lived in that area made it to Roosevelt. Okay. When you asked me what happened to the whites, they disappeared.

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[R. I. 807-813, Vol. 8] Q. During your tenure as the principal of the Jefferson School, were you ever aware of any of your white students who instead of attending the Colonel White High School attended other high schools?

A. Yes, one in particular. In May of '68 a parent approached me concerning that Colonel White was going on what was called a block system, and that she didn't feel her child could function there, nor did she approve of that particular system. Not even a comment on the block system, because I wasn't that familiar with it, all I could say was that the Board, as guidelines now stand, your child, if you still remain where you are presently staying, will have to attend Colonel White. That child has never attended Colonel White. He is now a senior at that particular school.

Q. At what school?

A. Meadowdale High School.

Q. What was the reason for his attending Meadowdale?

A. Well, the answer given to me, that he was taking a unique course; however, the course that he took last year, that was supposed to be unique, was offered at Colonel White and is offered again this year. I did bring this to the attention of the superintendent, as well as the superintendent in charge of student development, and nothing happened.

Q. What was that unique course?

A. Photography.

Q. Because of that election, that student was allowed to attend all of the classes in the high school?

A. That was told to me; that was the excuse.

Q. Are you aware of any black children in predominantly

white high schools who had been transferred to black high schools?

A. Last October or November, plus or minus two or three months, because I could be off, Mr. Webb, principal of Roosevelt High School, called my office and stated that he had a student that had been sent to him from Fairview, and he was not – he questioned whether or not he should admit that youngster. I directed Mr. Webb not to admit this child until I was able to read, you know, through the records to find out why the youngster was being sent there.

After going through a search for more information, I checked with the visiting teacher at Fairview, Eileen Morrison, Bart Cromer, who happened to be the visiting teacher at Roosevelt School. Dr. Carle, the superintendent of schools; Bill Goff, assistant superintendent in charge of student development, everybody agreed that this young man should not be sent to Roosevelt. He was sent there.

Q. Was this under one of those so-called hardship transfers?

A. Man, don't start me on that because everything appears to be a hardship for somebody else, but, you know, nobody looks at their over-all effective building. If for a moment you can look at Roosevelt now receiving youngsters – see, when we talk about freedom of enrollment, we are talking about black rape, because we see children that are talented, they are accepted somehow in the white community, but those that appear to have problems are sent right back. If freedom of enrollment was in fact just, then, hey, I am a student of your building, work with me like you do any student, Mary who lives next door down the street. Don't tell me that when I am in trouble I am different.

MR. GREER: Your Honor, if I might –

Q. Mr. Carter, are there any, and if so approximately how many, white children who take advantage of the freedom of enrollment to transfer to predominantly black schools?

A. I know of none.

Q. That does not mean there might not be a few?

A. What's a few when you are talking about 500 black kids going across town, and we are talking about one white or two whites.

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Q. Now, with respect to the curriculum transfers, are there instances where white children take advantage of that through transfers from a black school to a white school?

A. I gave you the example, the individual who left Jefferson and went to Meadowdale.

Q. Are there other such examples?

A. I can't cite specific examples. However, the way the policy is written up it is possible that – the policy as written states that curriculum changes do in fact have priority over racial changes.

Q. Now, are you aware of the capacity limitation on the freedom of enrollment policy?

A. I am, but I am also aware that there is a discrepancy in that. We have had three changes in freedom of enrollment. One we dealt with, first of all, what the principal said. If he said his building was full, it was full.

Secondly, we tried to deal with projected enrollment. The third area is actual enrollment within a building, the number of youngsters that could actually attend a building without filling all of the classes.

Q. Now, are those actual enrollments that are projected the same as the rated building capacities?

A. Not necessarily. Not necessarily. As an example, you may have a projected enrollment for 700 in a building, you may have only 600 attend. The actual capacity may in fact be 1,000.

Q. In other words, in terms of the individual capacity to accommodate the children?

A. That's correct.

Q. And what would be required then would be the reassignment of some teachers in order to maintain some sort of class size?

A. Yes. This year what we have had to do is that we, because of freedom of enrollment, population shift, we have transferred teachers from one building to another, and, yet, we still have space, you know, and also we have turned back applicants.

Q. Black applicants?

A. Yes. I am aware of some because I work with them.

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[R. I. 850, Vol. 8] Q. Now, if we had a square here hypothetically and this were the Jefferson School zone, what you are describing in terms of overcrowding might be called spot or non-contiguous zoning. In other words, we take a quarter here and assign them to a school someplace else in the school district.

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Q. Mr. Carter, are you familiar with other school systems where often they use this type of zoning, spot or non-contiguous zoning for overcrowding and other purposes?

A. Some for racial discrimination.

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[R. I. 856-859, Vol. 8] Q. Mr. Diamond drew some pictures on the board and I just wanted to get back to the specifics of this overcrowding situation at Jefferson Elementary School while you were there.

In the 1969-'70 school year, the Jefferson Elementary School remained approximately 80 percent black in its student composition, did it not?

A. '69-'70? I think it was about 65 or 70, maybe 70 percent black.

Q. All right. And while it remained at that composition because of the overcrowding in that year, black students were transported to Fairport Elementary School, were they not, 18 students?

A. I can't comment on the number.

Q. But there were black students transported to Fairport, were there not?

A. That is correct.

Q. And that was an essentially white elementary school or predominantly white elementary school?

A. An elementary school that was beginning to change also.

Q. And some 22 black students from Jefferson were transported to Ft. McKinley Elementary School, were they not, during that school year because of the overcrowding?

A. Yes.

Q. And that was in an essentially white school district, wasn't it, neighborhood?

A. Yes.

Q. And 42 black students, because of the overcrowding, were transported from Jefferson to Loos Elementary School, were they not?

A. I can't comment on the number of blacks.

Q. But, at any rate, –

A. Students were.

Q. All right. And that was a predominantly white elementary school, was it not?

A. Yes.

Q. And some 37 were transported to Horace Mann, isn't that correct?

A. Yes.

Q. And Horace Mann is over in the southeast side of Dayton?

A. Yes.

Q. And it is a predominantly white elementary school, is it not?

A. Yes.

Q. And 19 of those students from Jefferson were transported to Hickorydale, were they not?

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A. Yes.

Q. And that is an essentially white elementary school, is it not?

A. Yes. You mean then or now?

Q. In the 1969-'70 year, when this occurred.

A. O.K. I think there were blacks. I can't comment on the racial make-up. I think it was predominantly black.

Q. And the other schools to whom these Jefferson students were transported because of overcrowding were Shiloh, which is the northernmost elementary school, Shoup Mill and Valerie, isn't that correct?

A. Yes. And that is where we had the receiving parents in an uproar because they didn't want them there.

Q. And all three of those schools were predominantly white, were they not?

A. Yes.

Q. No other elementary schools were involved in that effort to relieve the overcrowding situation that existed at Jefferson in 1969 and '70, were there?

A. No, sir. That is where all the space was. There was no space on the west side.

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R. TESTIMONY OF KARL TAEUBER.

[R. I. 899-922, Vol. 9] Q. Would you give me the index of segregation as to each of those categories?

A. Okay. The residential segregation index for Dayton for 1960 is 91; the segregation index for students in the 1967-68 school year is 90; for staff, it's 78.

THE COURT: For which year, Doctor?

THE WITNESS: This is 1967-68.

THE COURT: That's the staff?

THE WITNESS: Yes, sir.

Q. Doctor, you have there the 1960 residential data. Have you calculated the index for residential segregation for each of the census years beginning in 1940?

A. Yes, I have.

Q. Can you give us the index, if you will, for those years?

A. For 1940, the black-white index of residential segregation was 92; for 1950, 93; for 1960, 91; and for 1970, 90.

Q. The 93, that was the 1950; is that correct?

A. That's correct.

Q. Is this a pattern in other cities, with respect to the 1950 census in the north, the increase?

A. I assume you are referring to this increase. I might comment first that the change from 92 to 93 and back to 91 and 90 represents a very small amount of change compared just to absolute numbers and compared to the amount of change that does show up in some other cities, but in specific answer to your question, it is true that most cities throughout the country showed some increase in 1940 to 1950.

Q. That would be increase in residential segregation by this index; is that correct?

A. That is correct.

Q. These are all 90 or above, and the perfect segregation is 100?

A. That's correct.

MR. LUCAS: I am sorry; not perfect. Qualify me on that word.

THE COURT: Total.

Q. Do you have the figures for 1970 census? Could you calculate the figures for students in 1970?

A. Yes. The segregation index for Dayton School pupils in 1970 is 83.

Q. The residential is what?

A. The residential is 90 in that year.

Q. What was the faculty in 1967?

A. The faculty in 1967 was 78.

Q. Did you calculate the pupils and faculty for 1972?

THE COURT: Together, or are these separate?

MR. LUCAS: Separately.

THE WITNESS: For 1972 enrollment data, the pupils index was 79; for teachers, it is 15.

BY MR. LUCAS:

Q. Your experience with the data, is that a substantial drop from the 1967 data with regards to faculty?

A. Yes, that's very substantial. As I mentioned, the fact that in any case there will be some random variations so that you won't reach exactly zero.

Q. Dr. Taeuber, were you aware that there was a faculty desegregation plan implemented in that year?

A. I was told after calculating the data, yes.

Q. Have you broken down any of the pupil segregation indexes by elementary and high school?

A. Yes. I calculated the indexes for each of these years separately for elementary students and for high school students.

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THE WITNESS: For 1967 – excuse me a second. I didn't realize you were going to ask that particular question. For 1967 the segregation for elementary school pupils is 91; for 1972, it's 87. For high school students, the 1967 segregation is 89; for 1972, 68.

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[R. I. 924, Vol. 9] Q. All right. And then assume that the School System has – I am pointing generally to the map, but not necessarily to particular schools.

Assume along the area of change, 1970, Cornell Heights, Jefferson, in that range there, assume along that area of change that the School System for the first time assigns black teachers to the schools in the area of change which already have between 35 and 69 percent black students.

At the same time, there are a large number of schools with no black teachers in them, and almost only white children in them.

What effect, if any, in light of the past assignment practice, does the assignment of black teachers to those schools and not the others have in terms of identifying these areas?

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A. I think that this would be treated as information by anyone interested in what might happen to these schools that they are being defined as becoming black schools in the pattern where most schools are either entirely black or entirely white, so that it is a move in this hypothetical case toward defining the school as one which is becoming in the context of the racial views of the population more suited for black students than for white students.

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[R. I. 946-947, Vol. 9] THE COURT: Would you ordinarily expect that the residential index and the student index would be approximately the same?

THE WITNESS: Within this five or ten points that's due to the difference in areas used, data base.

THE COURT: And that would be both ways. Whether or not the student index was substantially greater than the residential index, or substantially less, if it varied more than this five or ten percent, that would indicate some specific action had been taken by somebody, am I correct?

THE WITNESS: No, because the blocks are small areas and the school attendance zones are larger. I would expect the school index to be somewhat lower than the block residential index. If the school measure were higher, even by just a point, I would assume there must be some – or that there is probably some kind of action that means that the attendance areas are not strictly – that the school attendance is not strictly based on the attendance areas.

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S. TESTIMONY OF WAYNE M. CARLE.

[R. I. 954-955, Vol. 9] Q. Give your full name and occupation, please.

A. Wayne M. Carle, Superintendent of Schools, Dayton.

Q. Dr. Carle, would you give us your educational background, please?

A. I earned my A.B. Degree at Brigham Young University majoring in English and secondary education. The Master of Education Degree I received from the same institution. The Ph.D. degree at the Ohio State University, and the area was education.

Q. All right. Would you give me your employment history, please?

A. Yes. In the years 1948 to 1952 I was a writer, a newspaper writer. In 1952-'53, I was a teacher of a rural consolidated district, Roosevelt, Utah, and in the following years a high school teacher in Provo, Utah, and then an instructor at the Brigham Young University. In 1958, I believe, I was a mass media fellow of the Fund for Adult Education.

Q. And where was that?

A. At the Ohio State University. In 1959, I joined the Akron Schools as Administrative Director for Research and Information. In 1962, I became Assistant Superintendent for professional personnel. In 1966, I joined the State Department of Education of Ohio as Assistant State Superintendent of Public Instruction in charge of instruction, and in 1968 became Superintendent of Schools of Dayton.

[R. I. 956-958, Vol. 9] Q. Your present employment is Superintendent of Schools in Dayton; is that correct?

A. Yes.

Q. Dr. Carle, what were your duties when you were Assistant State Superintendent?

A. I was in charge of the area of instruction which included five divisions, one of them for the chartering of schools, about 5,000 elementary and secondary schools involving annual inspections; the area of teacher certification involving the accreditation of 51 teacher preparation institutions and about 90,000 teacher certificates; the area of instructional materials; the division of special Education, that is, education for the handicapped; and the area of guidance and testing for the State of Ohio.

Q. You mentioned chartering schools. Will you tell me what you mean by that?

A. Yes. Until about the time I joined the Department, it had to do with issuing charters for new schools and then inspecting them for meeting state standards. At about that time, about 1966, as I remember, the legislature changed the term to chartering of school districts meaning presumably that all the schools within a district must meet standards and the report forms were developed for that purpose.

Q. All right. Was this one of your particular assignments?

A. Yes, that was one of the divisions over which I was responsible and in which I would engage if there were appeals or problems arising from them.

Q. Am I correct in analogizing chartering to accreditation?

A. Yes, the term accreditation often is applied to a voluntary association such as the North Central Association of colleges and secondary schools and chartering is a specific term used in Ohio to specify accreditation or certification by the State Department of Education. They are separate processes but they are related.

Q. All right. Did you have any particular responsibility with respect to chartering multi-county schools? Did that fall into that jurisdiction?

MR. HOLSCHUH: If your Honor please, I have not objected, but I assume that none of this testimony is being offered in connection with any issue involving the State Defendants.

THE COURT: I would assume this is by way of background, is it not, Mr. Lucas?

MR. LUCAS: Yes, and it will lead to the State Defendants in relationship to the Dayton School System.

MR. HOLSCHUH: Then, I do object, your Honor.

THE COURT: I am going to sustain Mr. Holschuh's objection. We are not going to determine at this time the relationship of the State Defendants to the Dayton School System.

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[R. I. 974, Vol. 9] A. I think you asked me something to the effect of whether racial segregation bore on the chartering of the school, something to that effect.

MR. LUCAS: Yes.

MR. HOLSCHUH: Your Honor, I believe my objection is in the record.

THE COURT: Overruled.

A. I recall the situation in 1966, approximately, when the Middletown Board of Education was completing a new high school, and it was time to request a charter for that school. There was some controversy in the community that the fact that the new school was located in, I believe, a white area of the City, and the old building was in a black area, or at least a mixed area of the community, and that if indeed a new high school were opened and the other left operating as a second high school, that one would be racially segregated quietly.

It was represented to my department that if an exception in standards could be made so that the schools could be chartered as to campuses of one building, that the objection to segregation could be overcome, and it is my recollection that we thereby gave a waiver and that the school then operated when it opened, approximately in '67, perhaps '68, as a ninth year, a vocational program on one campus, and ten through twelve on the other campus, so that all students went to both buildings.

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[R. I. 978-982, Vol. 10] Q. Did it lay certain steps that you thought had been positive steps taken by the Board prior to your coming?

A. Yes. I had, for example, noted but in fact I guess the only word I can use was I was appalled. I felt I was very familiar with urban schools, having spent by then a dozen years working with urban centers, particularly in Ohio, and having been a personnel man, I was appalled to learn, after I got into the personnel situation, that we had completely segregated staffs in some buildings, and so we had made

efforts, particularly up to that first summer, to try to begin breaking that down.

I directed the personnel department to make efforts to assign more teachers across racial lines for the following school year, and also there had never at that point been a black administrator, for example, assigned east of the Miami River. There had been only one general administrative officer who was black.

These things were appallingly evident, and I tried to address them, and then pointed out after becoming aware of that statement, that "the predecessors of this board also have been concerned with racial balance. With respect to the West side, for example, records indicate the determination, in the early 'fifties,' to attempt to reduce the concentration of minority-group pupils in the then three schools with predominantly Negro enrollments — Wogaman, Garfield and Willard, by transferring parts of these districts and integrating other schools.

The subsequent large increase in non-white enrollments in the surrounding schools, however, finally negated this effort."

MR. GREER: I am sorry, Dr. Carle, I missed part of your answer.

THE COURT: So did I Dr. Carle.

THE WITNESS: Am I reading too quickly?

The paragraph noted that predecessors of the present Board had been also concerned with racial balance, and then I said with respect to the west side that there had been a transfer of predominantly Negro enrollments from Wogaman and Garfield and Willard by transferring parts of these districts and integrating other schools. The subsequent large increase in non-white enrollment in the surrounding schools, however, finally negated this effort.

THE COURT: Dr. Carle, may I inquire: This was a reference to boundary changes?

THE WITNESS: Yes.

THE COURT: That were intended to increase the racial balance; is that correct?

THE WITNESS: Yes, sir.

THE COURT: By taking portions of those three schools, the attendance zone, transferring them to other schools?

THE WITNESS: Yes.

THE COURT: It was not the reverse; it was not an effort to segregate further the black population; is that correct?

THE WITNESS: I have reviewed what records were available at that point, your Honor, and found a reference to what apparently in 1951, I believe, was an effort to rezone Garfield, Wogaman and Willard. At least those were the schools I apparently found reference to at that time, and that black enrollment in those schools had been assigned to the neighboring schools.

And I note, of course, that the large now white enrollments in those surrounding schools resulted, of course, in their becoming all black as well.

THE COURT: This is in 1951?

THE WITNESS: '51, I believe.

THE COURT: You are referring to a communication in 1957?

THE WITNESS: Right. In '67, I am sorry – '68, I should say.

BY MR. LUCAS:

Q. This is your own presentation?

A. I was at that point trying to summarize the progress made to that Committee. I had noted first that the Board in '67 had adopted a policy which says, "Every reasonable and constructive measure that can be effected will be taken for the ultimate elimination of racial imbalance in our schools," and then I in my statement to the Board reporting on an anniversary of that date pointed out that in addition to that action I had found, I believe the years 1961, that a prior Board had made those boundary changes.

Then I noted that I had recalled the 1963 Ohio Civil Rights Commission report in which all school districts were required to report on teaching and student racial characteristics; that

the Dayton Schools had been among the largest employers of Negro teachers in the State in relation to their population.

Then I went on to report, and I won't try to quote the rest, on the fact that there were now some black administrators being assigned to other schools; that there was some teachers who had been assigned across racial lines, and that there was some curriculum materials being purchased having to do with minority contributions.

THE COURT: Dr. Carle, excuse me once more. The document you are looking at, does that have an exhibit number? Can you tell me, Mr. Lucas?

MR. LUCAS: No.

THE COURT: Is this a report that Dr. Carle made to the School Board?

THE WITNESS: Yes, it is, your Honor.

THE COURT: I would like this in evidence.

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[R. I. 1103-1104, Vol. 11] Q. Mr. Carle, you were speaking at one point about the meeting with the HEW people. Was there a resolution offered in connection with the desegregation plan at the Board meeting?

A. This came at a time when, as I have indicated, considerable public demonstration was going on from time to time, and we were at the peak of plans for desegregating the staff. One of the reasons for Mr. Mancini's appearing before the Board with questions about whether we did or didn't have to –

Q. Excuse me. Was there opposition to the desegregation of the staff?

A. Yes, indeed. A group of teachers was indicating that it ought to be only voluntary, and the need for accomplishing the task was being asserted. There was a resolution offered to the Board in December of 1970, as I recall, that would have the effect of leaving teacher transfer a voluntary matter.

Q. Who was this offered by?

A. Mrs. Groff, a member of the Board of Education, offered the resolution, the context of which was that teacher transfers should only be on a voluntary basis.

[R. I. 1004, Vol. 10] Q. How does this relate, Doctor, if at all, to previous practices of the Board of Education?

A. Well, as I reviewed the personnel files and the past observations in the district, there was virtually no transfer, that is, there was very little transfer of teachers, and up until the early 1950's, a policy of no assignment of black teachers to classes with white pupils.

Along about that time, I think I had referred to some statement I had seen of either administration or a Board indicating that that practice was to cease and that there would be gradual assignment of black teachers in communities or in school areas where the communities would accept them. That practice discontinued – well, it was in force when I came to the district, in that there still were schools in which there were no black teachers whatsoever, and the personnel department, as I discussed the necessity of moving in that direction, would insist that some communities had never had a black teacher or were not ready for a teacher or a teacher is not ready to go there.

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[R. I. 1049, Vol. 11] A. Yes. The Board did subsequently sign a statement which, among other things, says "There will be no forced bussing during the term of the administration of the current School Board unless it is so ordered by lawful authority."

THE COURT: Dr. Carle, what are you reading? Is that an exhibit?

THE WITNESS: No, it is not. It is a statement that was signed by the seven members of the Board of Education.

THE COURT: Gentlemen, may I ask that this be put in as Joint Exhibit II.

MR. GREER: Perfectly agreeable your Honor.

MR. LUCAS: Yes, sir.

THE COURT: What is the date of that?

MR. WALTERS: October 26, 1970.

THE WITNESS: Your Honor, I think I said earlier November of 1971. If I did, I would have meant November of 1970.

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[R. I. 1056-1057, Vol. 11] Q. A lottery?

A. Lottery, I guess, is a good term. So that within those who qualified; that is, who had the basic background and those who were within the racial and sex groups would be drawn by lottery rather than by final selection by coordinators, so that we could remove any vestige of preference within the qualified group.

Q. Did you examine the data with respect to Patterson in terms of where the children come from who get into Patterson and its effect, if any, on the racial composition of other schools?

A. Yes, I believe both counsel have asked us for certain data so that I could reflect both from those data and also from my own experience. Historically, particularly in looking at Roosevelt, for example, at the time at which there were no black students in Patterson and also at a time when the black enrollment at Roosevelt was growing, there were white Roosevelt students enrolling at Patterson and no black students from Roosevelt admitted to Patterson. I became aware of this problem particularly with respect to Roth High School where white parents particularly attempted to enroll students in Patterson as a means of removing them from that racially changing school.

Q. Did they get in, Doctor?

A. Yes. I know of cases in which they did, yes.

Q. Can you see the Drexel School on the map?

A. Yes, sir.

Q. That is an elementary school; is that correct?

A. Drexel is an elementary school.

Q. Are there a number of white students still in that school?

A. Yes, Drexel is a white island in a predominantly black area of the city.

Q. Have you been able to account for where those children attend school in terms of feeder patterns at the present time?

A. No, it has been very difficult in all candor. I believe there is an exhibit showing the intended designation of eighth graders, but for several years the proportion of white students in Roth has not equalled the proportion leaving Drexel. Some of those have gone to Patterson, but we are unable to trace others.

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[R. I. 1069-1072, Vol. 10] Q. All right. Let's take the Edison fire. At the time you became Superintendent, how had students been reassigned following that fire?

A. A decision was made over a period of a day or two to transport the upper grade students from the school, leaving the lower grades in the part of the building that remained.

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A. Classes and teachers intact were taken to several buildings where there was space.

BY MR. LUCAS:

Q. Now, when you became Superintendent, did you make a change in that policy?

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MR. GREER: That is correct, your Honor. I think we can stipulate the date of the fire was sometime in the middle of April of 1968.

THE COURT: Let's go forward.

MR. LUCAS: Your Honor, may I ask the witness why he changed that practice?

THE COURT: You may ask that question.

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Q. I think you have the question, Doctor.

A. The schools to which the students were taken were predominantly white and, of course, the pupils were all black, and to maintain them as intact classes in the receiving buildings would be to segregate them racially within those schools.

I regret to say that, although I asked that that be terminated, it was not immediately terminated.

Q. When was it terminated?

A. During that summer I asked that the curriculum department work with the schools to assure that these classes would be integrated with the classes in the schools. After the school year was underway, in our supervisory visits we found in some of the buildings that there had been resegregation into, for example, reading or other ability groups in which black students were still on a track different from the white students.

So sometime later that year, or by the beginning of the following year, that practice, too, was rooted out.

Q. Do you recall which school that was?

A. Shoup Mill was one in which I recall considerable concern. And I cannot recall specifically others.

I know that there were one or two other schools in which this practice was of concern to us.

Q. Dr. Carle, the Jefferson transportation pupils, what difficulties, if any, did you run into as Superintendent in connection with that transportation to white schools?

A. Extreme difficulties on both ends of the line.

Jefferson had been a school of tremendous impaction over a period of several years.

Q. Excuse me. By impaction, you mean the same thing I do, overcrowding?

A. Overcrowding.

Q. O. K. Go ahead.

A. There had been a decision to add a primary building on the same side as the elementary building, and it was overcrowded from the moment it opened.

There had been use of space in nearby – I believe they were church buildings. There could have been other kinds of buildings used. My recollection is that second grades were selected for that move, and then the following year we determined to transport some pupils –

THE COURT: Doctor, what year was that?

THE WITNESS: I hope it was the fall of '69. It could be the fall of '70. Years telescope as you deal with these things.

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[R. I. 1096, Vol. 10] A. The same statute which gives the Superintendent the authority to assign teachers and other employees to schools in the district also gives to the Superintendent of Schools the authority to assign pupils to the proper schools except for pupils assigned outside the school district for which the School Board is required to act.

BY MR. LUCAS:

Q. That would mean tuition pupils; is that correct?

A. That's correct.

Q. And then my question, Dr. Carle, is why did you not assign the pupils in accordance with the Foster plan?

A. Well, it is a complex question but I guess it is a very simple answer. It would be impossible for me to implement that plan without the support of the Board of Education both from the standpoint of the authority it has over me as its Executive Officer and from the standpoint that it has control of the budget and of the resources and of the policies under which a program that great would operate, and I simply would not place students in the position of not being supported in such a major move.

Q. So, you declined to exercise your authority; is that correct?

A. Yes, that is correct.

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[R. I. 1101-1102, Vol. 11] Q. Dr. Carle, the Court had asked you about the Dunbar School and whether or not the choice was free.

Did you check the minutes, excerpts from the minutes that you had with you while you were on the stand yesterday?

A. Yes. I have a summary of the minutes and I do note that there were at least two occasions on which the Board made assignments of students to Dunbar.

Q. Well, in 1933 I believe the minutes have an entry with respect to the opening of Dunbar, is that correct?

A. I think I have that.

This is June 5, 1933, and the entry says "Be it further resolved that the 7th and 8th grades at Garfield and Willard Schools be discontinued and that the attendance at the Dunbar School be optional for all junior high students for all 7th, 8th, 9th grade levels in the city."

That would be at the time the school was organized.

Q. And Dunbar is where the McFarlane School is presently located on the map, is that correct?

A. Yes, roughly in the same area as Roosevelt High School.

Q. Is there another minute entry in the forties, dealing with the Dunbar School?

A. In 1942, the entry is "Be it further resolved that the 7th grade pupils from the Willard and Garfield Schools be assigned to Dunbar High School."

MR. LUCAS: Thank you.

THE COURT: Dr. Carle, let me ask you a few questions: I was under the impression that Dunbar, from its inception, was an all black high school?

THE WITNESS: Yes, that is my understanding, Your Honor.

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[R. I. 1105, Vol. 11] Q. Dr. Carle, the minutes to which you just referred dating in 1933 and 1942 referred only to 7th and 8th graders; isn't that correct?

A. That's correct in 1933 and in 1942 to 7th grade, I believe.

Q. And I believe in 1933 the Board indicated that the 7th and 8th grade at Garfield would be optional with Dunbar.

A. No. The entry, as I understand it, was that the 7th and 8th grade would be discontinued at Garfield and Willard. Then there is a further entry that junior high attendance at Dunbar would be optional throughout the district.

Q. All right. Now Garfield and Willard Schools which we are discussing were right in the geographical area of the old Dunbar High School which is now McFarlane; isn't that right?

A. That's correct.

Q. And those schools, Garfield and Willard were crowded back in the 30's and early 40's were they not?

A. Offhand, I don't recall what the enrollment situation in those schools was.

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[R. I. 1110-1114, Vol. 11] Q. Then, without regard to to what the position of your Board is, is your own philosophy as you will, opposed to the concept of the neighborhood schools or the forced bussing of students?

A. Neighborhood school is a term that I think defies definition. I have not heard it defined in this court and, therefore, I find it difficult to take a position one way or another on the term neighborhood school. I don't have a feeling about the term unless you define what you mean by that. The term forced bussing to me also has little meaning under the law. The Board of Education is required to provide transportation to students if they are in the elementary grades more than two miles away from school, and my experience has been that parents not only are eager to have that transportation but in some instances is very piqued in our district because we have proposed doing away with transportation that existed for distances less than that, and I therefore hardly look upon the transportation of pupils as being a "forced matter." I think usually it is quite the opposite. Persons want transportation for reasons of convenience and safety.

Q. Well, if I understand you correctly then you would regard these two concepts, the neighborhood school and the forced bussing of students as relatively meaningless concepts, that you can't really take a position for or against?

A. Well, I would find it very difficult to take a philosophical position, because I think both of them have been bandied around and have very little meaning or understanding in terms of any educational or administrative function of the school. I think they are just terms that are used but certainly don't relate to reality.

Q. All right. Now, you are, and back in December of 1971, were aware of the existence of Section 331348 of the Ohio Revised Code, which provides that the Board of Education of each city shall provide for the free education of the youth of school age within the district under its jurisdiction at such places as will be most convenient for the attendance of the largest number thereof, isn't that correct?

A. The question is was I aware of that statute, and the answer is yes.

Q. All right. Now, you have also told us on direct examination that you are aware of instances of specialized city-wide schools in the State of Ohio?

A. Yes.

Q. Are you aware of the Walnut Hills Academic High School in Cincinnati?

A. Yes.

Q. You were aware of an application from some people in the Toledo area for a city-wide school that was denied by the State?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. You are of course, aware of the Patterson School, which is a city-wide school in Dayton, are you not?

A. Yes.

Q. That is a vocational high school where the students

work two weeks and go to school for two weeks, is that not right?

A. Yes.

Q. You also indicated on your direct examination the instance of Dunbar, but that has been a school with neighborhood boundaries since 1962, has it not?

A. Again, it has boundaries. I don't know what the term neighborhood would refer to.

Q. Well, you referred to a two-mile radius a few moments ago. The accessibility of an area to the school is what determines its attendance zone, is it not?

A. No. I did not refer to a two-mile radius. I indicated that if a child resides more than two miles from a school, the law requires that he be transported to school. It has nothing to do with the radius or any limitation or guideline as far as distance is concerned.

Q. You would regard that two-mile radius for transportation as irrelevant to the questions of locations of places convenient to the attendance of the largest number of students?

A. I knew of no case in which in any standard of that kind has been applied in Ohio.

Q. All right. Without using the term "neighborhood" which you apparently don't recognize, Dunbar since 1962 has had a geographic attendance zone, has it not?

A. It is my understanding that that is so, yes.

Q. And the geographic attendance zone for Dunbar is in the geographical area where the physical building exists, is it not?

A. In the sense that the building is located within the boundaries described, for the attendance area, that is true. The boundaries, of course, are very irregular and very considerable in their distance from the building.

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[R. I. 1116, Vol. 11] Q. Just to clear up that one point: Is it your testimony that you don't understand what is meant by the concept "neighborhood school", Dr. Carle?

A. I would understand it in a context, and I simply am searching for the context in which you are describing it. • • •

[R. I. 1120-1121, Vol. 11] Q. All right. Now, if you would refer to Joint Exhibit No. II.

I can give him my copy.

That is a position paper dated October 26, 1970, is it not, Dr. Carle?

A. Yes, it is.

Q. And it is a paper that was signed by each and every member of the school board as it then existed, isn't that right?

A. Yes.

Q. And it was a paper that was put out to the electorate in connection with the efforts of the school to obtain passage of an 8.5 million levy for the schools, isn't that right?

A. Yes, it is.

Q. And in that position paper the school board represented that the school board itself would not impose forced bussing during the term of its administration, isn't that right?

A. That is the statement, yes.

Q. And the members of the school board signing that paper are the same people who were on the school board in December of 1971, are they not?

A. It is my recollection that that is so, yes.

Q. Now, referring to Defendants' Exhibit BU, if you will.

While the Clerk is locating that exhibit, Dr. Carle, do you know what your school board meant when they used the term forced bussing" in that position paper?

A. No, sir. I was not a party — that position paper was not, I believe, part of any board meeting, and I was not party to the construction of it.

Q. Did you ever see the position paper back in October 1970?

A. Yes. It was made public through the press, as I recall.

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[R. I. 1123-1125, Vol. 11] A. Well, you are asking me the question in the context of the term formed bussing, and then you are asking me another question having to do with freedom of enrollment, and the two are not the same.

Q. Well, I am trying to understand what, if anything, you understood of what your Board was saying in this position paper.

A. I wouldn't have thought there was any connection between freedom of enrollment on one hand and the term forced bussing on the other hand since there was no transportation as far as the Board of Education was concerned involved in freedom of enrollment. There was transportation available to students in the district. For example, sizable areas in the northwest and southeast areas and students were given transportation. They were forced to attend those schools in the sense that those were the attendance regulations of the district, but that's why I say that term to me is so meaningless because wherever a student is assigned, if he is two miles or more from that destination in the case of the Dayton Schools a mile and a half, transportation is provided and generally welcomed.

Q. So I understand two things from what you have told me, Dr. Carle. First, that you consider that the term used by the Board in its position paper was meaningless; is that right?

A. No, sir. I testify, I think, to your questions. I don't recall your asking me whether it was meaningless.

Q. Well, I don't mean to get in all this repertoire with you, but I find it difficult to avoid, Mr. Carle. I asked you what your understanding of what the Board meant by that term in the position paper.

A. I don't think that's what you asked me, sir.

Q. Well, I am asking you now.

A. I think the term forced bussing was in the context that it was appearing in newspapers and in controversy at the time.

I don't think it has specific reference to practice in the Dayton Schools which you asked me about.

Q. You felt that their use of that term had no relation at all to the freedom of enrollment program which was then in effect in the Dayton School System?

A. I can't read Board of Education members' minds, but to me, I made no connection whatsoever with that policy.

Q. All right. Could you take a look at Defendants' Exhibit BU. That is a resolution.

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Q. That is a resolution that this same Board of Education that signed the position paper in October and existed in December of 1971 unanimously passed in January of 1971; isn't that right?

A. Yes, sir.

Q. And the unanimous resolution that was passed by also the members of the Board of Education in January of 1971 indicated that the Board sees no alternative to the neighborhood school, does it not?

A. That phrase is used, yes.

Q. On January 4 of 1971, did you understand what the Board meant by the phrase that saw no alternative to the neighborhood school?

A. Well, I don't recall what I thought at the time. I suppose I saw it in the same context that the other resolution arose.

Q. What other resolution are you referring to?

A. The statement that you referred to earlier. I had indictated in previous testimony that that grew out of reported negotiations between members of the Board with the problem of passing a school levy and that the price or whatever you want to assign to it for having unanimity for getting an issue on the ballot was that of a statement to that effect.

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[R. I. 1131-1135, Vol. 11] Q. And that was knowledge that was common to you and to the community and to other members of the school board in early November of 1971; isn't that true?

A. Insofar as that represented what had been reported in the press and elsewhere about positions taken by the political organization which several of them aligned with.

Q. And that would shift the majority of the school board from the 4-3 situation you had been working with in the year 1971 to a different 4-3 situation on these issues?

A. That possibility existed. I was aware, however, that individuals within that group, the group that you described, had made expressions that were not identical in terms of their understanding and their commitment to the concept you indicated and, indeed, I can think of at least one, perhaps two or more who had made statements supporting concepts of integration.

Q. Well, I am not talking about that, Dr. Carle. In fact, your board both before and after January of 1972 has been unanimously in that regard, have they not?

A. I couldn't say that that is so or not. I do know that the 1967 resolution committing the board to looking for racial balance to my knowledge has never been rescinded, so in that sense it is perhaps a continuing policy.

Q. Well, that was a unanimous resolution, wasn't it?

A. I was not with the district at that time, but I believe it probably was.

Q. Fine. The only things I am talking about are these two issues which I appreciate may not have meaning to you, but which have at least been defined as a neighborhood school issue and the issue you have forced bussing of students, and you were aware in November of 1971 that you would have at least four out of seven on the school board opposed to a removal of these attendance lines and opposed to involuntary bussing of students?

A. I am not and, Your Honor, I really do need to define the term because it is very important. I am trying to make it clear there was no way to anticipate the reaction of the successor board of education concept and I also want to make it clear that in my judgment there would be – if for example, the Foster Plan is a context in which you might be asking the question that the basic elements of the Foster Plan do come within what I understood to be positions of most of the members of the Board of Education, and I simply don't want to say that because there was literature and there was publicity that used those two terms that that necessarily specifically ruled out the possibility of any form of integration called by any other name or even by those names.

Q. I am sorry, Dr. Carle, but like Sweeney and Eliot's poems, I have got to use words when I talk to you, and if you don't understand my question, I will attempt to rephrase it. I am not talking about opposition to integration, and I think you would agree with me, would you not, that there are all sorts of devices to try and achieve an integration.

A. Yes.

Q. What I am talking about, and let me talk about them one at a time so that we can try to understand each other. You knew in November of 1971 after that election of Board members that by January 1972 you would have four people on that school board who were definitely opposed to the idea of eradicating all of these attendance districts that existed in the Dayton School System; isn't that right?

A. No, I didn't know that.

Q. All right.

A. I wouldn't say that the neighborhood school concept necessarily would be disharmonious with eradicating of boundaries since I believe that those who hold that concept do, indeed, approve of a certain district-wide or area-wide or different forms of attendance which might include changing of both boundaries.

Q. All right. Let me ask the question, or let me ask a different question.

You knew after the election in November of 1971 that by January of 1972 you would have four people on the School Board who had campaigned at one time or another, taken public positions at one time or another, where they said that they were strongly supportive of what they called the neighborhood school concept?

A. That's true.

Q. All right. Now, you were also aware of the election in 1971, that on January 1, 1972 you would have a four-man majority on your Board who had campaigned or taken public positions at one time or another, saying that they were opposed to what they defined as forced bussing of students, isn't that right?

A. In their terms, yes.

Q. All right. And I understand you didn't understand their terms?

A. I believe I indicated I understood a context, but that I felt that term itself was not very useful in describing school practices.

Q. Now, in view of the imminent change in the Board majority, did you have any discussions with the then Board President, Mr. Lucas, about an eleventh hour implementation of a plan to abandon school attendance lines and to adopt bussing of students against their will?

A. Well, I had a number of conversations with Mr. Lucas. I don't recall one based on any – for at least not on several of the terms that you used.

On December the 2nd, the Board had met and received the report of the Committee of 75, and I was asked by Mr. Lucas to assist in preparation of resolutions which would implement the recommendation of the Committee of 75 and complete the commitment which the Board began in April of 1972 by appointing the Committee and asking for its recommendations as far as racial isolation in the district was concerned.

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[R. I. 1140, Vol. 11] Q. All right. After this election, it became clear, did it not, that you would have the following four persons: Mr. Goodwin, who had just been elected, Mrs. Groff, Mr. Hart and Mr. Riddenour, who were all still on the Board, who would be the four who had taken these positions we have talked about concerning neighborhood schools and forced bussing?

A. Yes.

Q. Now, sometime in 1972 Mr. Riddenour died, isn't that true?

A. Yes.

Q. Just so we can get our scorecard correct.

And then the Probate Judge of Montgomery County appointed Mr. French, who was the former administrator of the school system as the new member of the School Board to take the place vacated by Mr. Riddenour's death?

A. Yes.

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[R. I. 1144-1146, Vol. 11) THE COURT: Mr. Greer, before you ask another question, let me direct an inquiry to you that is now commencing to trouble me.

I indicated I didn't wish to retry Brown, and I certainly don't want to retry Marberry vs. Madison, and I can see some aspects of it at this point.

Assume for just a moment that the Board on the day after election, those who had therefor been in the majority, met, and assume further that they specifically retained Mr. Lucas and that he joined them and they decided that specifically and directly they would be in office only until the end of the year, and that they were going to implement the Foster plan, and they directed Mr. Lucas to draft these resolutions; and let's assume that Dr. Carle agreed with them and encouraged it and assisted them. Let's assume all those things. Let's further assume that this was in direct defiance, if I may use that word at the moment, of the will of the electorate.

Does all of that have any significance, in view of the fact

that they were the legally constituted Board and they did have authority to do precisely that?

MR. GREER: I think it has significance only in this narrow context, your Honor, and that is that while they are the legally constituted authority, they certainly have the right to adopt any appropriate resolutions. In this case, where much is being made of the purported admissions in those resolutions, and in view of the Keys case and other cases, I think it's important to show the context in which they arose as an eleventh hour effort that was precipitous.

It wasn't the result of a long deliberation of the body. It was merely an attempt to do something before the situation changed.

THE COURT: Is it any the less the legal action of a duly constituted Board of Education?

MR. GREER: No, your Honor, I would say that it is not, nor is it right to reconsider it any different.

THE COURT: O. K. And so if I were personally, as an electorate of Dayton, enormously irritated at what they had done, can that be translated into a legal status wherein Keys, for example, or Bradley, is not applicable? Can this Court draw a distinction by saying, well, this was done in defiance of the will of the voters and therefore the Court will set it aside?

MR. GREER: I don't think in that context there is a distinction, but it seems to me that the cases do make a distinction on action which is taken precipitously at the expiration of a term, and that is all that I am attempting to show by these questions, that that is exactly what happened here, that the action was taken a month before they knew the majority would change, and it was just a hurry-up affair to try to gain a step on the parliamentary ladder.

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[R.I. 1150, Vol. 11) Q. Is this Monday afternoon session where Mr. Lucas the Board member, brought Mr. Lucas, the Plaintiffs' attorney, in this lawsuit?

A. Yes.

Q. Now, in your December 2 meeting with Mr. Lucas, the Board member, had he given you a draft of proposed resolutions or any other written material?

A. Oh, no. The Board met on that occasion to hear the report of the Committee of 75, and it was sometime after that, and my recollection is it would be over the weekend because I don't think we had put much on paper until Monday morning, as I recall.

Q. What meetings did you have with Mr. Lucas, the Board member, after the meeting?

A. Telephone calls, I think, exclusively.

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[R. I. 1160, Vol. 11) Q. This was at the meeting on December 6th?

A. Yes, sir. And I probably – I am certain that I was very well aware and very concerned about having the documents legally in harmony with the status of desegregation as it existed in the country at that time.

Q. At that meeting with Mr. Louis Lucas, or at any other meeting before the Board meeting of December 8, 1971, did you have any discussions or conversations with anyone concerning the tactical aspects of adopting such resolutions, and then having them rescinded?

A. The only specific reference I can recall is some mention of the status of litigation in Denver and perhaps – is Kalamazoo relevant? Perhaps those cases. I don't remember any other discussion along those lines.

Q. But the effects of adoption of the resolutions, and then later rescision of them, were discussed in the context of those cases prior to December 8th, weren't they?

A. I don't remember discussing it in that context, but that certainly was part of the legal literature at that time, and I'm sure it was discussed in the overview we were talking about. I wanted my Executive Committee to understand where we

were legally in desegregation at that point, if we could get a viewpoint on it from Mr. Lucas. I do remember that.

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[R. I. 1165, Vol. 11] Q. Well, the purpose of the December 16th meeting was to try to rule on the motion for reconsideration, which indeed was found to have been proper under the rules of order that govern the School Board proceedings, isn't that correct?

A. I think it was a little more complicated than that, but in substance that certainly was part of it.

Q. And then the December 16th meeting ran into a problem because of the problem of notice of the meeting, isn't that right?

A. Again, I think that was alleged, as I recall.

Q. And then they tried to have another meeting on December 30th, just before the year ran out, to correct that parliamentary problem, didn't they?

A. There had been a meeting scheduled for December 30th, and that meeting was held, yes.

Q. And that again ran into problems of notice to Board members, didn't it?

A. I don't have any recollection on that.

Q. Did you attend all three of the meetings that the Board held in December to try to get these resolutions resolved?

A. Yes.

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[R. I. 1174-1176, Vol. 11] Q. The December 8 resolutions were subjected to an immediate motion for reconsideration on December 8, weren't they?

A. There was such a motion made, yes.

Q. And there was a lot of parliamentary scurrying around at these other two meetings in December trying to clear up the resolutions before the year came to an end, wasn't there?

A. I would simply interpret that as the Board's wanting to make clear the intent of its action.

Q. And, of course, we have already gone over the elections and I don't want to go over that again, but the plan which you worked up with Dr. Foster involved a wiping away of all of the school attendance lines and an adoption of a bussing program that would involve the involuntary bussing of some 22,000 out of 50,000 students, did it not?

A. Before I answer that, I should like to just technically respond to the plan. It had nothing to do with wiping away boundaries. It did propose a different means of assignment, but there is nothing inherent in the plan that did away with boundaries. It was the Board's action on December 8 that did that. The method of assignment in the Foster Plan would have included the apparent option to accept transportation wherever assignment was at a distance longer than the existing policy for transportation within the district.

Q. Well, did it involve involuntary bussing of some 22,000 out of 50,000 students in the system?

A. There is an estimate that 22,000 or so pupils; that is, an increase from about 6,000 to 22,000 pupils would qualify for transportation, but there was nothing inherent in the plan to involuntarily bus them, no.

Q. Is it your understanding that in view of the fact that the resolutions of December 8 were pending on a motion for reconsideration that you had no authority to pursue those resolutions?

A. That would not have been my understanding, no. Well I don't know what you would mean by pursuing the resolutions. I don't regard myself as having done anything one way or the other that would – if you are talking about the Foster Plan, I obviously was free at any time to develop a plan.

Q. You weren't –

A. I don't think there is anything inherent in the resolutions that said I could or could not consult with Dr. Foster.

Q. You weren't developing the Foster plan as a result, then, of the resolutions of December 8?

A. I would say as a response to, but I don't think the reso-

lutions either required or prohibited me from taking any action that was taken.

Q. Now, you did not recommend the plan as such to the Board, did you?

A. That's correct.

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[R. I. 1182-1184, Vol. 11]. Q. And you also noted as a very positive thing for the Dayton School System that back in the year 1963 Dayton had been among the highest employers of blacks of any school system in the State?

A. Yes. I was not, of course, aware that they were employed only to teach black children.

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Q. In your statement to the Board of Education in August, 1968, Dr. Carle, you state to them, did you not, that "When the first Ohio Civil Rights Commission survey was made several years ago, I recall that the Dayton Schools were leaders in the employment of Negro teachers in the State, thus this is not a community that has been insensitive to the changing needs and demands of the Urban Center."

You made that statement, didn't you?

A. Yes, I did, Mr. Greer. I suspect that probably is in the same context that I noted in the deposition that Mr. French made, which I think is in evidence, that after three or four years here he was not aware that the swimming pools at Roosevelt high school were segregated, for example. Obviously I didn't have, after two months in the city, the kind of grasp that a year or two later I had of what really was going on in the Dayton Schools.

[R. I. 1188-1191, Vol. 11]. Q. Have you ever heard of Lloyd Lewis or of the Frontiers Club?

A. Yes, indeed.

Q. That is a black organization, isn't it, dedicated to improving the rights of its people?

A. I believe that is probably a fair characterization. I'm not totally sure of its purposes.

Q. And are you not aware that at the meeting of the Board, on Thursday, February 5, 1959, Lloyd Lewis, Sr., on behalf of the Frontiers Club of Dayton, made a citation to the Dayton School System which read in part that the –

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Q. The presentation reading in part, "The National Organization, Frontiers of America, through its various chapters, recognizes and awards a merit award to the organization in the local community which in the opinion of the members of the local chapter has done most for the promotion of brotherhood in the community. The members of the Dayton Chapter feel that the integration of school facilities in this community has been quite noteworthy and the progress has outdistanced all Ohio School Systems. Therefore, the Dayton Board of Education has been cited for the 1958 award."

You are not aware of that citation?

A. No.

Q. And you are not aware of the citation plaque that stands all by itself on the wall of the Board room of the Dayton Board of Education?

A. Well, I believe all the plaques that are there stand by themselves, but I have not been aware of that one in particular.

Q. How many plaques are there on the wall?

A. I only in my mind's eye can see several hanging on the wall. I would guess maybe three or more.

Q. In your address to the Board back in 1968, where you were citing to the Board your feel for the progress that it had made in efforts toward integration, you also pointed out, as a factor, open enrollment in all summer high schools centers that had been inaugurated in 1968, did you not?

A. Yes.

Q. And that was a program that permitted summer school

students from all over Dayton to mix together at different summer schools?

A. I believe there were perhaps three centers and some effort to specialize courses in those three centers. So there would be some interchange of students. I do not know how many or to what extent that actually occurred.

Q. Did you also cite that as a positive factor only because you were naive and unaware of life's harsh realities?

A. No. I think any of the citations that are honestly made reflect the typical white response to the black concerns of the time. Obviously, it is a very defensive paper and tends to cite rather limited measures none of which address the fundamental segregation of the schools district.

Q. And you also cited the fact that nine receiving schools would be more racially balanced with children from Edison and Jefferson where their elementary grown had necessitated transportation.

A. I thought that was a very positive development . Thus, I regretted the fact that we segregated back into the original schools two years later.

Q. And you also cited the fact that of the 319 teachers employed by mid-August for the 1968-69 school year, 29 percent are black; didn't you cite that?

A. Yes. That would be roughly comparable to the composition of the staff as a whole and frankly, would be anticipated. I noted as a personnel man in a large school district that the statistics from year to year tend to be about the same regardless of what you did. If you had about 30 percent blacks on the staff, you could expect those appointments.

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[R. I. 1207-1211, Vol. 11] Q. Are you aware that when Roth High School was opened – which was in 1959, wasn't it?

A. Yes.

Q. – that when Roth High School was opened, its student population turned out to be approximately 75 percent white and 25 percent black?

A. I think that's close to being what it would have been, yes.

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Q. Dr. Carle, I have put on the board a set of overlays showing the elementary school boundaries in the Dayton System as they existed in 1957, and then as they existed in 1970.

There have been a few changes in those boundaries during that entire period of time, isn't that correct?

A. Are you talking about just physical boundaries?

A. Yes.

A. Yes. That appears to be so.

Q. In fact, the only real changes that have been made even in some of the areas in western Dayton, for example, the Gardendale-Westwood, where the boundary of the more western school has taken away some of the territory of the eastern school as that school district became much more densely populated? Isn't that true?

A. Well, I wouldn't characterize that as a map indicating that change. I would have to put it in the context of the 1951 or so policy of the Board that there would be no more transfers, and then in that context, obviously many optional areas, and other options for attending schools, have continued to be practiced. So whether the boundary lines are the same or different, is relatively irrelevant to the actual effect on how schools become or are black or white today.

Q. All right. But you would agree with me that there are relatively few changes in boundary lines per se, would you not?

A. Well, except that there are a whale of a lot of optional areas. There is just no visible reason for all of that meandering of boundaries.

Q. All right. Now, during this period where the actual boundaries did not change substantially, and I not correct that in the '51 period up to 1970 Fairport School has changed from a zero black population to a black population of 59.1 percent in this school year?

A. I'm sure that you are quoting from the statistics on the exhibit.

Q. Well, without trying to pin you down, I will appreciate that you can't keep these in your mind much better than I can keep them in mine, but there has been that change in the composition of student body of the school without any change in the boundary, isn't that right?

A. No. There has been a change in the boundary of Fairport in that it became in 1971 a feeder school to feeder schools in the Daytonview area.

Q. All right. Now, the Grace Greene School over this area has changed without a substantial change in boundaries, an almost white school to an almost black school, has it not?

A. Well, again I recall that we asked Dr. Charles Glatt to prepare maps when we were going into the middle school planning to determine the race and location of all children in relation to where they were attending school, and I recall asking him, why, when he put red dots for black children and blue dots for white children throughout the 5th and 6th and 7th grades, to indicate then what the populations would be in the 6th, 7th and 8th grades, that there were within the green district, where the school is virtually all black, blue dots indicating white children residing there. And I asked him how could that be, and he indicated that cards – that is, we asked the schools to fill out a card for each child for that purpose with their race, the grade level and the name of the child, and he said that the cards showed their attendance to be Van Cleve and Longfellow, and of course, at that time they were almost all white.

So when you asked me what the history of Greene is in relation to its boundaries, I just had to say that I can't explain totally from the boundary what the racial composition of that school was.

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[R. I. 1221-1227, Vol. 12] Q. Well, without looking at the little map that's up in the right-hand corner, we have established that Mad River Township is an area to the east and northeast of the city limits of Dayton, haven't we?

A. Yes.

Q. And the high schools most accessible to that east side of the city are Kiser, Wilbur Wright and Stivers, are they not?

A. I don't see that that has any bearing, since they were already on board, and the distances probably were no greater than those being used to send black students to Dunbar at the time anyway.

Q. Well, let me rephrase my question. The three high schools to which these students were sent were geographically located closer to Mad River Township than any other high schools in the System, weren't they?

A. I would say that that geographically is so. I think it needs to be understood that we are talking here about inner district transfer. These students were not residents of the city school district of Dayton, and were admitted to the district by Board action and contract, and therefore there is no relation to any existing boundaries within the Dayton School District.

THE COURT: Dr. Carle, would you have not taken them to the closest schools?

THE WITNESS: Well, I think the issue at the time, your Honor, was that there was not space for high school students at Mad River. When it became apparent, that is, the study that is in evidence, as I interpret it, became apparent that there would not be room at Wilbur Wright and Kiser and Stivers to continue serving those students. I'm simply saying that to my knowledge there was no consideration of housing them at Roosevelt or Roth – Roth was not in existence then. Well, perhaps it was, the later years – and Dunbar, and if space were available there, it would be just as appropriate to house the students in those schools as in the ones that were alleged to be without space.

THE COURT: And it would be your position that the Board's failure to do that is evidence of segregation?

THE WITNESS: Well, it certainly fits the pattern that has been pervasive down through the years, that no white students, regardless of from where they came, or the purpose, were assigned to black schools.

Q. There was available space in the '50's then at Kiser and Wilbur Wright and Stivers to house these students without a high school, wasn't there?

A. The studies that I saw indicated that in the latter part of the '50's this space was inadequate and therefore Mad River would have to be notified that some years hence, I assume three or four years hence, they would have to make provision for their own pupils because these schools would not have room.

Q. Well, Mad River did build a high school, didn't it, in the late '50's?

A. I assume pursuant to that notification they then undertook to house their own students.

Q. And Kiser especially was a school and is a school that historically has had an undercapacity enrollment of students, isn't it?

A. Well, I don't know about historically. It has never been a large school. It was not designed as a high school, and hence it has been a small school.

The only reference I have is to the study which indicated that given the number of pupils, and I think it was perhaps five or six hundred or more, being transported into the city school districts from Mad River, they were being phased out of those three schools because the space would be needed within the school district in those schools.

Q. Do you have any knowledge at all, Dr. Carle, as to whether they was available capacity in any Dayton High Schools other than Kiser, Wilbur Wright and Stivers in that period of the late '50's with the possible exception of Patterson?

A. I note that there is a study of enrollments in high schools, I believe, for 1957, which would be about the time that the

decision on those three schools was being made, and by rule of thumb it would appear that Dunbar, for example, would be among other schools that would have room for at least some of the students.

Q. How many?

A. I don't know that there is adequate information other than the rule of thumb. I suppose comparing it with the room availability indicated, or the room numbers in other buildings, something between 100 and 200, perhaps could have been housed at Dunbar, using the figures of that study that year.

Q. This program, however you characterize it, was phased out at the end of 1950, was it not?

A. I don't know the exact year. The study, I believe, showed enrollment through the latter part of the '50's, and I don't know the terminal date, although I assume it would have been perhaps the first year or two of the '60's.

Q. And just so I will understand your testimony, are you characterizing this practice in the late '50's of putting Mad River Township students in the three schools geographically closest to that area as being somehow improper on the part of the Board of Education?

A. I say it is indicative of practice of not considering the assignment of white students to black schools.

Q. Now, yesterday you cited to us three examples that you indicated were the examples you knew of of students not being assigned to the closest school, those being Dunbar, the Shawn Acres situation, and the Veterans Administration situation.

Do you recall that?

A. Yes.

Q. Other than the subjective field that you described yourself as having as an administrator and the information as to some 7th and 8th grade students from adjacent schools who attended 7th and 8th grade at Dunbar, you would have to admit, would you not, that Dunbar was a city-wide optional school up until 1962?

A. Well, I testified to the 1933 policy making Dunbar an open enrollment school for junior high age. I am not sure of the other Board actions that would have similarly affected the other grades. There are, of course, Board actions terminating that. I believe, however, that it is evidenced that the operation of Dunbar was not simply as an open enrollment school but rather one which had many, many overtones from the prevailing practices in the district and that, as a matter of fact, a self-respecting black student, unless he were an exceptional student in another school almost inevitably when to Dunbar.

Q. By his own choice, wasn't it, for whatever reasons?

A. I wouldn't characterize that as a choice.

Q. Only because of extreme fixed factors that affected the choice, is that how I am to understand your answer?

A. Well, let me illustrate it this way: I remember your talking earlier about the Springfield or Smithville Area of the City. I was knocking on doors on a Saturday morning, I recall, and was surprised to meet the mother of Bing Davis, one of our outstanding teachers. So, I know very well where the Davises have lived over a good many years in the district.

Q. You mean Springfield Street rather than Smithville Road?

A. Yes, Springfield Street. Being apparently regarded as an outstanding high school student as he was a teacher later in the schools, he went to Wilbur Wright. His brother was assigned to Dunbar and was not kept at Wilbur Wright, and I have heard of other instances similarly in which even members in the same family were assigned to different schools. In Bing's case, his brother was not regarded as being the same kind of scholar that he was.

Q. Do you know of nothing other than hearsay to indicate that Bing Davis's brother couldn't go to Wilbur Wright if he had elected to do so?

A. Well, obviously all I know about anything prior to 1968 is hearsay, Mr. Greer.

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[R. I. 1242-1244, Vol. 12] Q. Now, before Carlson Elementary School was built in 1958, that whole area where Carlson exists was an optional area between Jackson and Residence Park School District, was it not? Perhaps I should point to that on our map.

I am pointing to the Carlson School District.

A. Right.

Q. That school was not built until 1958, was it?

A. That would be approximately the year, yes.

Q. And if we look at our overlays between '57 and '70, we can see that the Carlson Area before the school was built was optional to Jackson on the east and Residence Park on the north, isn't that true?

A. Yes, that's true.

Q. Now, let me refer you, if I might, to Defendants' Exhibits CO and CP.

Is it not correct, Dr. Carle, that the records of the school system for the period from 1957 to 1972 indicate that no children living at the Veterans Administration Center ever attended Jackson Elementary School?

A. Defendants' Exhibit CO lists students from Residence Park and the other one from Jackson School, and the statement is that from the years 1957 to 1972 there were no children in either of those schools from the Veterans Administration Center.

Q. I don't think you are reading them correctly. I'm only asking you as to Jackson. The records indicate that there are no children during that entire period from the Veterans Administration Center that ever went to Jackson, isn't that right?

A. Well, the heading indicates the years 1957 to '72.

Q. Right, which it would be in 1958 when Carlson was built, and that was no longer an optional zone between Jackson and Residence Park, wasn't it?

A. All right.

Q. So during that period, all the way up to the present time, no child of anyone living at the Veterans Administration

Center at least according to the records of the school system, ever attended Jackson School, isn't that true?

A. That is what this exhibit, I think, purports to say, yes.

Q. All right.

A. And if we look to Residence Park, which is to the north of that area, the records do disclose that during that entire period, from 1957 all the way up to 1972, a total of 48 children for that 15 years of whom eight were black children living at the Veterans Administration did attend Residence Park?

A. Yes.

Q. And do we not also know from the information that your office has developed that by the year 1963 at least all three of the schools that are involved here, Carlson, Jackson and Residence Park, were 80 percent or more black in their student composition?

A. After 1963?

Q. Well, let me pull back from that question.

We have records of the student compositions in 1951 and '52, and then we don't have any up until 1963, isn't that right?

A. I think there are records in '54, and then not until '63.

Q. So that the earliest date we can pick between '57 and the present —

A. I'm sorry. I said '54. '51, I think you said, and I think that is correct. 47 to 51, yes.

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[R. I. 1250-1266, Vol. 12] Q. All right. Perhaps I didn't make my question clear. I was really asking, and I thought your testimony yesterday was concerned with an earlier period than the Christian Science Monitor was referring to in 1968 and 1969.

A. I don't think it was, particularly. I think I was just indicating a reputation of a school that seemed desirable.

Q. Well, quoting to one side the Christian Science Monitor and trying to get back to what I recall of your direct testimony yesterday, I thought you had indicated a period of time in the

'50's or '40's that the enrollment at Patterson Cooperative was filled with white students?

A. Yes, I believe that was the testimony.

Q. It was an optional school city-wide at the time, was it not?

A. Students elected to go there, yes.

Q. And before giving that testimony on direct examination, did you make any investigation to determine whether that school was really filled to capacity or whether there weren't a lot of available openings at that school during that entire period?

A. No, I don't recall either making such an investigation or particularly being aware one way or another. The only investigation that was asked in this suit that I was aware of had to do with the assignment of pupils to the school and, particularly, the racial characteristics of the school.

Q. Did you make any attempt to ascertain how may white students from, say, Roosevelt High School were attending Patterson Co-op, or Roosevelt School District were attending Patterson Cooperative High Schol at any given period of time?

A. Yes. I think that is an exhibit.

Q. And there were only 48 or 51 students from the entire Roosevelt area at Patterson Co-op back in 1948, weren't there?

A. I believe that figure appears on that chart.

Q. And by the 1967-'68 school year which was before you arrived on the scene, the enrollment of Patterson Cooperative High School was 12.8 percent black, wasn't it?

If you can again refer to Defendants' Exhibit AR, I think it will be helpful for you to keep with you for the rest of these questions.

A. I believe you asked for the year 1967, and that was 12.8 percent.

Q. Now, over the years and in operating a school where a student was on the job for two weeks and in school for two weeks, it was necessary for the school to be able to place that student in a job in order for him to participate in the program, wasn't it?

A. That was the practice, yes.

Q. All right. Let's get on the the HEW material. According to Plaintiffs' Exhibit 11-F, as I understand it, there was a voluntary agreement of the Board which settled the finding of probable noncompliance with HEW regulations that was made with respect to the staff of the School System; isn't that correct?

A. My testimony was that there was a letter finding the district to be in noncompliance, and the Board did adopt a resolution, two resolutions relative to resolving it.

Q. And it did that rather than going through the administrative hearings which it could have done to challenge the finding; isn't that correct?

A. Well, that would certainly be one of the alternatives, I would think, yes.

Q. Referring to page 2 of Plaintiffs' Exhibit 11-F which is a letter to you from HEW dated October 14, 1972, the third paragraph indicates, does it not, that in agreeing to desegregate voluntarily, the Board waived its opportunity for an administrative hearing on this office's finding of probable noncompliance?

A. Yes.

Q. And as I understand it, the only change that was ever made in the voluntary agreement was the setting of a specific date for that action with respect to the staff?

A. Yes. After the original resolution, it was required that a date be affixed to it, and that was done, I believe, two or three months later.

Q. All right, and the conditions noted by HEW with respect to Roosevelt High School were all taken care of and rectified by expenditures by the Board, were they not?

A. Well, all expenditures are by the Board. Are you asking the source of funds for various programs that were cited at Roosevelt?

Q. No. I am not interested where the money came from, and I don't think anybody in this hearing is, but expenditures were made to rectify those conditions?

A. Yes. Often Board funds are identified as local funds and tax funds are identified differently.

Q. The other matter concerning HEW as to which you testified was a matter involving transfers of white students from Roth High School and transfers of black students from Stivers High School; isn't that correct?

A. Yes.

Q. And those were special transfers that were made by the Board in situations of great stress; isn't that right?

A. I think that characterizes it well.

Q. If I could refer you to Plaintiffs' Exhibit 11-D –

Q. The Stivers situation arose, did it not, Dr. Carle, after an attempt was made to bring black students into Stivers High School by making a boundary change so that the Stivers boundaries went across the Miami River to include two predominantly black elementary schools?

A. Yes, that boundary change was made.

THE COURT: At what time, Mr. Greer? May I have that?

THE WITNESS: I believe that would have been for the fall of 1969.

Q. All right, and the Board's reason in making that boundary change was to try to add black students to the student population of Stivers High School, wasn't it?

A. One consequence of the action, yes. I testified that the boundary was expanded in balloon fashion, that is, east, south and west, and one consequence of that was that black students in the Irving and Whittier area were included in those changes.

Q. And that was by design rather than just happy coincidence, wasn't it?

A. I think one has to view the setting in which Stivers existed at that time. It had been through several years of decline because of the expressway construction, housing removal and urban renewal, and a school that perhaps had 1400 pupils at one time was down to perhaps 700 or less, and the expansion of boundaries made a more viable school for Stivers

by increasing the number of students attending the school. I think it is now perhaps up in the range of 1250, 1500 or more pupils.

Q. All right. The thing that really cut down the student population of Stivers was the extension of Route 35 from Xenia all the way through the Stivers district to where it interchanges with I-75; isn't that right?

A. That certainly was a major factor.

Q. That took large chunks of neighborhoods right off the map, didn't it?

A. Yes.

Q. And so Stivers was in a position where capacity-wise it could handle many more students than were actually available in the old attendance district?

A. Yes, that had been evident for about a decade and no one had really examined the boundaries to deal with it.

Q. Well, it has only been a few years that Route 35 has been completed, hasn't it?

A. Well, the property acquisition and the urban renewal measures dated back some years into the '60's.

Q. All right, but at any rate in the decision that became effective in the fall of 1969 to expand the Stivers attendance district to bring more students into that school, the decision was made that in expanding the boundaries, the attendance district would cross the Miami River and take in, I think it was, the Irving and Whittier elementary zones; is that right?

A. Yes, part of those zones.

Q. After Stivers became populated with black students, there were riots and demonstrations and a good many difficulties at Stivers; isn't that right?

A. Would you give me the time you are talking about? Are you talking about just the opening of that school year?

Q. I am trying to lead up to Plaintiffs' Exhibit 11-D and try to explain for the Court why black students from Stivers were temporarily assigned somewhere and why white students from Roth were temporarily assigned somewhere else .

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Q. Immediately before or in the period immediately before the transfer of students from Stivers and from Roth, there were demonstrations, were there not?

A. That had been true for some period of time in the Roth area, and I believe in the Stivers area it had to do with an incident in which a group of blacks left the building and subsequently were not reassigned or some of them at least were not reassigned to the building.

Q. Were there periods where either of these schools had to be closed?

A. There had been at Roth. There had not been at Stivers at that point, as I recall.

Q. And Exhibit 11-D was a letter written by you on February 20, 1970 to Mr. Henderson of the Department of Health, Education and Welfare who had raised a question concerning these temporary transfers; is that right?

A. Yes.

Q. And in that letter, you informed him that 34 black students were transferred from Stivers at their parents' request and after individual conferences with the pupil personnal department. They were given temporary assignments to Roosevelt or Dunbar with the understanding that the assignments would be reviewed at a later date; is that correct?

A. Yes.

Q. And you also informed him that there were 36 white students at Roth High School who were transferred to other high schools, some of them integrated but most of them predominantly white, and that the transfers were made at parental requests and after psychological study of the allegations that injury or harrassment was interfering with the learning process?

A. Yes.

Q. And you also indicated that 40 black students remained at Stivers and 18 white students remained at Roth.

A. Yes.

Q. And you went on in that letter, did you not, to explain that the reason for these temporary transfers was for the individual good of the students and that you thought it was

necessary to do this to avoid interruption in the continuity of their instruction?

A. Yes.

Q. And you also pointed out that you had determined that in the absence of explicit educational reasons to the contrary, all of these students would be reassigned to their school attendance areas of residence beginning with the September 1970 semester?

A. Yes.

Q. And then in the last paragraph, you expressed yourself as follows to the Department of Health, Education and Welfare: "I appreciate your concern about forces and actions that contribute to increased racial isolation. I regret, however, that neither your office nor other Federal agencies including the Department of Justice that were invited to observe last fall found it expedient to express concern at that time or to lend direct assistance to reducing racial polarity and separatist pressure."

A. Yes.

Q. And that was an honest feeling on your part, I am sure, wasn't it?

A. I think that's a pretty good summary. I had indicated that the city at the time I came here was reaching a peak of tension and that factors in operating schools were very, very difficult.

Q. And you feel confident, do you not, that the transfers that were made during that period of heated controversy were justified for educational reasons?

A. It depends on whether one uses limited reason or the broader educational reason. They were restrictive to the broader educational purpose because they again reinforced and repeated the separation of white to white schools and black to black schools and reinforced the notion that when races are in small minorities in a community which has a substantial minority in a school, it is very difficult to maintain a viable situation.

Q. Well, Dr. Carle, these are facts, unfortunate facts of

life which we all recognize and your policy back at this time with the two sets of students was a temporary transfer for their own physical and mental health until a cooling off period had occurred, wasn't it?

A. Yes.

Q. And you would do the same thing today if demonstrations and physical violence occurred, wouldn't you?

A. I would probably be forced to, Mr. Greer, given the facts that we haven't changed the basic situation that segregates the schools.

Q. So am I right that you don't characterize your action in connection with these 34 black students from Stivers and 36 white students from Roth as a racially motivated action or a segregationist policy of the Board?

A. I would characterize them as totally racists in that they were necessitated within the frame of a situation that required or forced or resulted in a decision based on racial characteristics.

Q. The racial problem that existed was a problem of the student community rather than of the Board of Education, wasn't it?

A. I don't see how, as an executive officer of the Board of Education, I can ignore the community, because the children are the community.

Q. I don't ask you to ignore the community, and I wouldn't expect anyone to, but my inquiry was on a more narrow basis.

The violence and threats of violence that led up to these transfers were not violence or threat of violence that members of the Board of Education were permitting on the grounds of Roth or Stivers High School, were they?

A. Not incidents, but the Board had control over the conditions that led to that kind of activity.

Q. Dr. Carle, on February 20 of 1970, when you appended the letter that we have as Plaintiffs' Exhibit 11-D, you felt that the complaint of HEW concerning the assignment or temporary assignment of these black and white students for

their own physical and mental health was completely unjustified, didn't you?

A. Not completely unjustified, since I admitted the result of it and corrected it, but I did attempt to explain it, yes.

Q. Well, it had been your intention all along that these were going to be temporary transfers and that you would put the students back as soon as the environment was such that they could complete their learning process which was the reason for having them in the school, is that right?

A. I think that is substantially so, yes.

Q. Didn't I detect a little note of complaint or dismay that the temporary transfer was questioned in the last paragraph of your letter?

A. Well, the last paragraph, I think, was saying it is easy to criticize if you are not a part of the problem and that schools desperately need help of the agencies that apparently were reviewing the situation.

Q. Sometimes the war looks different to the Generals than it does to the people in the trenches, doesn't it?

A. I haven't been a General, so I don't know.

Q. You felt it looked different when you were in the trench back there in February of 1970, didn't you?

A. Definitely.

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Q. At any rate, you were in the trenches in February of 1970, and if you were back in the trenches you would have to do the same thing again on temporary transfer of students, wouldn't you, if you felt their own mental and physical health and safety required it?

A. Well, I have found contrary to the texts I had in educational administration that almost every situation that arises these days seems to have different characteristics, so I don't know whether I would have the same circumstances and would take the same actions, but certainly I can't minimize the factors that were existing then.

Q. If you had another situation such as you had at Roth

and Stivers today, would you leave those children in the situation?

A. The reason I am pausing is that we do have situations comparable. I think other things have been attempted to try to intercept, and one certainly has to place the safety of students very high on the list of considerations if there were an emergency.

Q. But you don't feel that in 1970, or in the fall of 1969 — I'm sorry — that you were acting in a racist manner or the Board was acting in a racist manner in doing what you thought was best for the health, safety, educational experience of these children, did you?

A. I think the response was racist in that it was defined by a racist situation and was limited by the experience that a segregated system and staff had to deal with it. In that sense the results had to be racist and the actions I think have to be viewed as racist. There is no way to separate the racial factors from the action and the results.

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[R. I. 1274-1284, Vol. 12] Q. If we are talking about maintaining a precise mathematical ratio in each school, isn't that almost a physical impossibility?

A. I am not talking about maintaining a precise ratio. I am simply indicating the separation was so great that in some cases the movement that was made was not totally in conformance with the agreed district characteristics of 70-30 which was the original dimension and that my recollection was that where exceptions occurred, they tended to be in the direction of the former imbalance.

Q. You can recall giving a deposition for Mr. Diamond after this suit was filed on June 19 of 1972 in your own office, can you not, Dr. Carle?

A. Yes.

Q. And referring to Page 5, Pages 4 and 5 of that deposition, can you recall stating as follows in response to a question from Mr. Diamond:

"ANSWER: As the result of those initial activities, the desegregation of staff was undertaken and essentially completed this last fall, the fall of 1971."

A. Yes, I recall saying that.

Q. And you were under oath, of course, at the time you made that statement, were you not?

A. Surely.

Q. That was a correct statement, was it not?

A. Yes. I used the term essentially, and obviously I am referring to the fact that there still is exceptions to that, however minor they might be. I was emphasizing the fact where those exceptions occurred, they occurred in that direction.

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Q. To rephrase my question, it is true by the fall of 1971 the staff desegregation in the Dayton School System was essentially completed; isn't that right, Dr. Carle?

A. Yes. If I could just try to define that a little bit, I was noticing for the current year, number of staff instead of being 70-30, it was 41 or 42 or something of that sort. It is that kind of exception I am talking about.

Q. Are you referring to Defendants' Exhibit AM?

A. I don't have an exhibit in my hand. I have a compilation.

Q. If you have those statistics, you are able to tell us, are you not, that by the 1971-72 school year most of the schools in the system had a teaching faculty that was between 30 and 40 percent black?

A. I think that's a fair characterization.

Q. Three and a half years ago, back in 1969, the Dayton School System was tops in the State of Ohio in employment of black educators generally, was it not?

A. In relation to the percentage of pupils in the districts, I believe that we did report in that manner, yes.

Q. Do you as Superintendent of the Schools publish a little magazine or leaflet called "School Day."?

A. Yes. I believe that those figures were given in School Day.

Q. All right. If I could refere you to Defendants' Exhibit AQ.

Q. Do you recall an issue of School Day that you put out on April 21, 1969 after you had been with the system for almost three years?

A. Yes, have it in hand.

Q. And that came from your office, didn't it?

A. Yes.

Q. Under your authorship?

A. Yes.

Q. And the big capitals were "Dayton Schools Record Highest in Employment of Negros Educators," wasn't it?

A. Yes.

Q. By this time in the space of almost two years, you had had a chance to find out what the assignment patterns of teachers in your own system were, hadn't you?

A. Yes.

Q. And you started off your article by saying that Dayton is a City of Employment Opportunity for Negro Educators, didn't you?

A. Yes.

Q. That was true, wasn't it?

A. Yes.

Q. And you indicated that a district-by-district survey made by the State Board of Education disclosed that Dayton ranked No. 1 in the State of Ohio in the proportion of Negro teachers to Negro pupils and the proportion of Negro administrators to Negro pupils; isn't that correct?

A. Yes.

Q. You had the best record in the State in 1969, didn't you?

A. Yes. This follows up the earlier comments I made about the employment of teachers. This, of course, has no relationship to assignment.

Q. And you also pointed out that Dayton ranked second in the State in the proportion of total teaching staff that was black in 1969?

A. Yes.

O. And also ranked second again in the total percent of black administrators?

A. Yes. You indicated that before.

Q. However, while it ranked second in those departments, you also pointed out that if you look at the pupil percentages, Dayton had nearly a 3 to 5 ratio of administrators to pupils while the leading city in the State had a ratio of only 2 to 5.

A. Yes.

Q. You also pointed out, did you not, that Dayton employs three times the percentage of Negro teachers as the average of the 20 largest districts and four times the percentage of administrators?

A. Yes.

Q. And that is a record of which you were justly proud, is it not?

A. I think it is a good record in employment, yes.

Q. It is the same kind of thing you were referring to in your address when you first came to your present job as to the record that the school system had achieved in 1963; isn't that right?

A. Yes, in general, it is. The administrative characteristics of course, had changed considerably by this time.

Q. In your article of April 21, 1969, you didn't undercut the praise by any disparaging remarks about the system, did you?

A. Well, I think the article stands for itself. I don't know whether it undercut or not. I suppose it would depend on how you view the article. There was no intention to undercut anything, no.

Q. Referring you, if I might to Defendants' Exhibit AO, that is an exhibit prepared by your office showing counsellor assignments in the Dayton School System by racial identity, is it not, Dr. Carle?

A. Yes, it is.

Q. And it shows that as of the present time to counsellor

assignments are divided in an essentially equal manner among all schools in the system; isn't that right?

A. Yes.

Q. In other words, it is broken down as to the percentage of black counsellors assigned to predominantly black schools, black counsellors assigned to predominantly white schools, white counsellors assigned to predominantly white schools, and white counsellors assigned to predominantly black schools; isn't that right?

A. Yes, it is.

Q. And the percentages vary only from 38.9 percent to 62 percent in those categories; isn't that true?

A. That appears to be so, yes.

Q. Well, it doesn't just appear to be so on this piece of paper. It appears to be so in the system of the Dayton Schools, doesn't it?

A. I just meant that the figures in this column appear to be what you have represented.

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Q. The figures that were prepared by your office in making this exhibit do actually reflect the situation that existed in the Dayton School System, don't they?

A. I think they represent what is on this table, and I think they are accurate with respect to the categories listed on this table.

Q. That really isn't my question. I want to make sure and have you affirm for me, Dr. Carle, that the figures shown on this table actually do represent the number of black counsellors that are in white or black schools and the number of white counsellors that are in white or black schools.

A. This is my understanding, yes.

Q. Now, let me refer you to Defendants' Exhibit AM.

Q. Using that to refresh your recollection, if necessary, Dr. Carle, am I not correct that by the 1971-72 school year, 26 of the 74 elementary principals and assistant principals in the Dayton School System were black?

A. I am just about caught up with you. I have a figure 26 and what I am looking for is 74. Can you help me out? In what column is that?

Q. It would be a matter of adding up the total figures, wouldn't it? They still teach that old fashioned subject, don't they?

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A. Well, at any rate it sounds as if what you say is correct. I just can't find the 74, and I am sorry I am not with it on which columns are relating to which figures here right fast, but that sounds as if it is a substantially correct representation.

Q. And then by 1971-72, 13 of 32 high school principals and assistant principals in the system were black; isn't that right?

A. Yes. As I mentally add that row, yes.

Q. And by going through this Exhibit, we can find out just who was where as far as race is concerned at each school in the system?

A. Yes.

Q. Then, if we turn to Defendants' Exhibit AL, this is an exhibit that your office prepared at our request showing a summary of the racial composition of staff by composition of student body in the Dayton City School for the years 1968 through 1973; isn't that right?

A. Yes, these are correct figures.

Q. And it indicates that by 1972-73 there were five situations where Negro principals were assistants in schools having 50 percent or more white student population; isn't that right?

A. Yes, it does.

Q. And it also indicates an integrated administrative staff in schools 50 percent or more white student population in 15 schools?

A. Yes.

Q. Do you know what your staff was referring to when they used integrated staff in that compilation?

A. I believe that you gave them the headings for the columns and I assume they mean by that two races in the

school or two races in the staff, I should say.

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[R. I. 1291-1292, Vol. 12] Q. Those are largely jobs that are held by Union employees, are they not?

A. The largest group in that category would be members of the buildings trades union, yes.

Q. And am I not correct that in October of this year, the Dayton School Board has adopted resolutions recommending two unions and an apprenticeship program that would increase the number of black individuals available in that category of the job positions?

A. You are substantially correct. It isn't quite that simple. There was a long negotiation with the Unions which is embodied now in a proposed master agreement and it would for the first time provide for free apprentice and apprentice position that were not open to the Board of Education previously.

A. All right. And except through negotiations such as that, the Board of Education has no control over the membership of any Unions with which it has to deal, does it?

A. Again, it is a complicated factor involving both Civil Service and Union apprenticeships, and you are correct that that particular area of employment is the most difficult one.

Q. Referring you to Plaintiffs' Exhibit 42.

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Q. That exhibit shows the background by school and type of job of the nonteaching personnel that we have just been talking about, doesn't it?

A. This is a little more complicated form than the previous ones, and I have not reviewed it, so I will take your word for it because you weren't right in previous ones.

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[R. I. 1295-1299, Vol. 13] Q. Dr. Carle, when hunger and fatigue called us away, I was referring you to Plaintiffs' Exhibit 42, was I not?

A. Yes, you were, and with the delight of the evening meal – well, here it is.

Q. This exhibit represents the distribution of the non-teaching personnel throughout the school system, does it not?

A. Yes, sir.

Q. By school and by type of employment?

A. Yes, and by race.

Q. And without going into great detail with this greatly detailed exhibit, it shows that there is a fairly wide distribution of black and white personnel throughout the school system in this category, does it not?

A. There is distribution, yes.

Q. All right. Now, it was on December 19 of 1969, was it not, that the school board adopted its statement of intention that each school staff throughout the entire Dayton School District would have the racial composition that would reflect the total staff of the district as a whole?

A. You are asking about the date of completion or the date of adoption?

Q. The date of adoption.

A. December of 1969, is that the date?

Q. December 19 of 1969.

A. Yes, I believe it was the date on which the date of completion was adopted. I assume that was your question.

Q. All right. And as of December 19, when the Board adopted that plan for integration of the entire staff, the following strides had already been made, had they not? The first, by December 19 of 1969 every teaching staff in the entire district was integrated to some extent?

A. I believe that would have been the result of efforts from the previous spring through that time, and I believe that would be so, yes.

Q. And by December 19, 1969, out of all 50 high schools and 53 out of 58 faculties, a favorable racial balance had been achieved, is that right?

A. That sounds like a statement from that period, yes.

Q. And by December 19, 1969, the movement toward city-wide racial composition had been significant in many schools, had it not?

A. You are still talking about faculty?

Q. Yes.

A. Yes, in the sense that there had been some movement in each building, I think, by that time.

Q. And as of December 19, 1969, of the six chief executive officers, 33 percent were black; of a hundred directors and supervisors, 29 percent were black; and of all central office administrators, 25 percent were black, isn't that right?

A. That sounds as if it would be so for that period, yes.

Q. And by December 19, 1969, when the Board adopted the resolution to which we have referred, of all the principals and assistant principals in the system, 30 percent were black, isn't that correct?

A. That sounds as if it would be a correct figure for that time, yes.

Q. At that time, of all of the administrative staff, 28 percent were black?

A. I believe that would be so for about that time.

Q. And by that time, eight of the eleven high schools had integrated administrative staffs?

A. That also sounds as if it would be characteristic of that time.

Q. And by December 19, 1969, ten of the twenty-three elementary schools that have more than one administrator had integrated administrations?

A. Yes, I believe so.

Q. By December 19, 1969, three Negro principals had been assigned to predominantly white schools?

A. I should think that would be so, yes.

Q. And by December 19, 1969, ten white principals had been assigned to predominantly black schools?

A. I would think that would be so.

Q. And of the new teachers employed for the 1969-'70 school year, 28 percent were black, which brought the city-

wide percentage of Negro staff members to 29.4 percent, is that not correct?

A. That would sound about right for the '69-'70 school year, yes.

Q. Now, let's turn topic of conversation for awhile to the schools in the Dayton System.

Let me first clear up a couple of points.

Garfield School is no longer an elementary school, is it?

A. No. Garfield is used now as a manpower training center.

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[R. I. 1302-1303, Vol. 13] Q. And in September of 1962, the Hawthorne Elementary District was made optional between Kiser which had extra space and Colonel White High School, was it not?

A. I don't know that Kiser had extra space or that the space relationship between the two schools was different.

Q. Do you know the date that this optional zone was created?

A. I don't recollect it offhand, no, sir.

Q. The record that you have or that your office has put together for this case indicate that September of 1962 was the date, do they not?

A. I just don't recollect. There are lots of records in exhibits at this point.

Q. Now, referring you to Defendants' Exhibit AR, the percentages of the student compositions at Kiser and Colonel White High School in 1963 which is the first year after 1951-52 for which we have figures show that the black composition of the student body of Kiser High School was 2.7 percent while the black composition of the student body of Colonel White was only 1.1 percent, does it not?

A. Those are the percentages listed, yes.

Q. That would be as of 1963?

A. Yes.

Q. And that is the 1963-64 school year?

A. Yes.

Q. The residents of the optional area between Kiser and Colonel White were predominantly white, were they not?

A. Yes.

Q. And five years after that option was created, the black population of Colonel White High School as far as student body is concerned was still only 8.4 percent black; isn't that right?

A. You are referring to 1967?

Q. Yes.

A. Yes, Colonel White was 8.4 percent.

Q. Now, we have already talked this morning about Stivers High School.

THE COURT: Excuse me, Mr. Greer. May I ask for that same year what was the black population percentage of Kiser?

THE WITNESS: Kiser is less than 1. percent. It is .9 of 1 percent.

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[R. I. 1306-1310, Vol. 13] THE COURT: Was there ever a time that Dayton did not also have the schools with kindergarten through eight? I hope I am not confusing you. Assuming that there was a time when there were junior high schools as well, was this an optional situation or could a student go kindergarten through eight and then go to high school?

THE WITNESS: I am not able to say. There was a change in the early forties, perhaps 1941 that reinstituted or at least instituted the 8-4 system. Now, there undoubtedly was a period in which there were junior high schools. Whether they were for all areas of the city, I am not sure.

THE COURT: But since that time the 8-4 system has been in effect?

THE WITNESS: Since the early forties, the 8-4 system has been in effect.

THE COURT: The middle schools were never intended to replace junior high schools?

THE WITNESS: No.

THE COURT: You may proceed.

O. There are five middle schools that were created in September 1971; am I not correct?

A. Yes.

Q. And have I referred you to Exhibit AW?

A. Yes.

Q. The attendance areas which surround MacFarlane and Whittier middle schools are predominantly populated by black people; is that not correct?

A. Yes, that's correct.

Q. Some degree of mixing of black and white population was achieved at the Orville Wright and Cornell Heights middle schools; is that not correct?

A. A small amount of mixing in part of the Orville Wright area and a disproportionate mixing in the Cornell Heights area.

Q. Included in the Orville Wright area were Franklin and Kemp Elementary Schools which had no black students in 1970 and 1971, isn't that correct?

A. Yes.

Q. And also included in the Orville Wright middle school area was Washington Elementary School which had 16.4 percent black student body composition in 1970 and 1971?

A. Yes.

Q. And Washington is the school that we have described that includes that Springfield Street area?

A. Yes.

Q. Going to Cornell Heights, that middle school included Fairport Elementary School which had a 9.7 black student population in the 1970 and 1971 school year?

A. Yes.

Q. And it also included Jefferson Primary and Jefferson Elementary which had predominantly black student populations in that year?

A. Yes.

Q. The Longfellow Middle School is the last of the five, isn't it?

A. It is the last one listed on that page, yes.

Q. And it included three former elementary schools; Longfellow, Van Cleve, and Hawthorne; is that not true?

A. Yes.

Q. Longfellow in 1970-'71 had a black student body composition of 53.9 percent?

A. Yes.

Q. Van Cleve had a black student body composition of only 2.1 percent; is that right?

A. Yes.

Q. And Hawthorne had a black student body composition in 1970-71 of zero?

A. That's correct.

Q. So, those three schools then, are mixed together in grades 6 through 8 at what is now Longfellow Middle School, is that correct?

A. Yes.

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[R. I. 1320-1329, Vol. 13] Q. So that there was only a month or so left of the 1967-'68 school year for those pupils?

A. Perhaps a month and a half, I would gather.

Q. Now, you were not present at the meeting of school administrators that took place on the Monday after the Edison fire, were you?

A. No, I was not.

Q. And you didn't mean to imply in your direct testimony that the administrators, including Mr. Goff and Mr. Harewood, who met on the Monday after the fire, didn't plan to assimilate those students into regular classes at the start of the next fall year, did you?

A. I don't believe I have the information one way or the other on that.

Q. All right. Then you wouldn't imply that it wasn't the intention of the administrators to assimilate those children when the next school year started, would you?

A. I recall Mr. Harewood saying that the reason they were

assimilated was that I had directed that that be done in the summer of 1968.

Q. And those students that were assimilated into these various white schools to which they were transferred after the fire remained students of those schools until their graduation, did they not?

A. There could have been students who remained until graduation. There may have been, for example, students who were in the seventh or eighth – by graduation, you mean moving out of the elementary school?

Q. That's the only way you get out of an elementary school, isn't it?

A. Well, we do not have a graduation in the elementary schools, but they would have been students who were close to leaving the elementary school, I believe, who were transferred, and there may be others who have elected to remain in the receiving school and indeed have left schools after having remained in under freedom of enrollment.

Q. All right. But at least as far as the policy adopted by the Board in that fire situation, the students were assimilated in the schools and remained there unless they graduated or transferred under freedom of enrollment or something of that nature.

A. No. The assignments which were made to the other schools were reassigned to the Edison and MacFarlane areas when those boundaries were set up as middle schools.

Q. All right. The only thing that would change it would be the setting up of middle schools in 1971?

A. Yes. That constituted the return of the students who had been assigned to the other schools.

Q. All right. And I assume that some of the '68 students by that time had passed through elementary school and some were still in elementary school?

A. I would assume so. I don't happen to recall specifically which grades would be where at that time.

Q. Now, let me refer you to Defendants' Exhibit BA.

Q. This exhibit is a summary, is it not, of the transfers that were made as a result of overcrowding situations?

A. These are students from Jefferson, Westwood, and then the Edison ones would have been the fire situation.

Q. Jefferson and Westwood were overcrowding and Edison was the fire situation?

A. It is late in the evening, Mr. Greer, and I would like to reserve judgment on the Westwood situation. We were dealing at that time the fact the eighth grades at Westwood were still contained in Roosevelt and Roth High Schools. There have been considerable controversy over the fact the eighth year had been assigned to those high schools and this may have been involved in that adjustment.

Q. All right. Well, let's talk about the Jefferson situation which is what you discussed in your direct examination.

A. Yes.

Q. Those were temporary transfers made because of overcrowding conditions at Jefferson School; isn't that right?

A. Yes.

Q. And that situation stopped in September of 1971 because the overcrowding problem was resolved by the creation of the middle schools at that time; isn't that correct?

A. It was possible to reassign to the total buildings in that complex, yes.

Q. During the period that the transportation of the students existed from the '69-'70 year until the middle schools were created and resolved the problem, eight receiving schools were involved; isn't that right?

A. Yes.

Q. And all of those receiving schools were predominantly white schools; weren't they?

A. Yes.

Q. As I understand it, the first year the students were transferred, an entire class would be transferred to one of these receiving schools?

A. Yes.

Q. And the number of students involved were up to 81 students in the Valerie condition, weren't they?

A. Yes, both Valerie and Meadowdale had considerable space on the perimeter of the City at that time.

Q. So, the result was that you would have one class in, say, Valerie School or any of these other schools that would have a lot more students than the other classes in those schools?

A. I wouldn't say that there were more, but there would be a sizeable number in a class, yes.

Q. Can you give me any specific examples? Let's take Valerie School. Do you know what class from Jefferson was transferred to Valerie?

A. I am sorry but I don't have those data before me, and my recollection wouldn't be good enough at this point.

Q. But at any rate, the reason in the second year of this program you switched from a class transfer to a district or a block transfer out of the Jefferson area was to distribute children throughout the classes in the receiving school rather than to lump them all into one class at the receiving school?

A. Yes. I indicated that both in terms of the sending parents who felt in some cases some students had been in adjustment more than their share because of the grade level selected and sensitivity on the other end that there were more black students in some classes than parents thought was desirable.

Q. But when you changed from a class transfer to a district transfer, the students transferred from Jefferson were still approximately 80 percent black students, weren't they?

A. Yes. It had increased in that period, but that is approximately the proportion, and, of course, as you have indicated, they were from all grade levels at that point.

Q. Now, let me change the subject to the subject of capacities of school buildings. You would agree with me, would you not, that there were many factors involved in estimating pupil capacities of any given school building?

A. I think that there certainly are a number of criteria that might be used, yes.

Q. As I understand it, the Dayton public school surveys are based on square footage; in other words, an average number of students per square foot in classrooms per day?

A. Essentially, that is correct.

Q. As I understand it, the Dayton Public surveys use a standard of 30 square feet per person versus the City Code, which is 20 square feet per person versus the State Code which is 40 square feet per person.

A. That was the basis of one calculation, yes, sir.

Q. And the Ohio State University survey on capacities is based on a pupil-teacher ratio as opposed to square footage, is it not?

A. I am not sure that that describes – it may have been a pupil-teacher ratio in relation to rooms available, perhaps.

Q. Don't they use one teacher to 28 pupils per classroom?

A. I believe that would be the standard they used.

Q. And am I also correct that the Dayton teachers have insisted on a ratio of one teacher to 25 pupils per classroom?

A. Well, I am not aware of that. I know that teachers everywhere insist on as low a teacher-pupil ratio as possible, and 25 seems to be a goal that is mentioned often around the country. I don't know that that particular figure has been bantered around in Dayton more or less, but I am sure there are teachers who would hold that position.

Q. Do you know of any teachers who find it irrelevant whether there are 25 or 50 students per teacher per classroom?

A. Well, I think you are referring to earlier testimony that research doesn't relate class size to class achievement, and as to what various teachers think about that research finding, I don't know. I would think a typical teacher would want as few pupils as would be assigned.

Q. And is the reason for that laziness or is it because they feel it is more effective?

A. Well, I am sure if you were asking a teacher to justify that point of view, the teacher would say, "The fewer pupils I have, the more individual attention I can give to the pupil,

and if I could have my way, I would be Mark Hopkins and teach to one pupil on the other side of the log."

Q. Let's turn that subject to my next question which is that none of these surveys whether they are based on square footage or pupil-teacher ratio take into consideration the curriculum which is offered, do they?

A. I wouldn't say that none of them do. There is an effort, as I recall, in the tables to indicate that, for example, gymnasium space was included in the calculation because gymnasiums are used for classes each period in the day, but I think auditoriums, for example, were not included because they are not used routinely for class space. I am not sure as to what attention was given specifically to laboratories although I noted in a table there was reference to pupil stations in areas such as vocational or shop classes.

Q. Obviously an industrial arts class or a science class with laboratory equipment you need more square footage to accommodate both pupils and equipment; isn't that true?

A. Yes. Normally you discuss this in terms of pupil stations.

Q. And even in purely academic subjects where all you need is a teacher, a desk, some paper and pencils, the size of the classes vary, do they not, so that there may be a small number of pupils in the room due to the subject matter that is being taught?

A. Well, since you evidenced little relationship to present teaching arithmetic a little earlier, I would say that doesn't characterize the academic subject any more. There is more than a desk and a teacher and paper to teach academic subjects, so there may be indeed other kinds of equipment today that wouldn't have been true earlier, but in general a lecture-type class will require less space than a shop type class.

Q. Well, leaving aside my ignorance of modern education, is it not true that the size of classes varies? For example, if you have a school that is teaching fourth year Latin, you may have a small number of pupils in each class session as opposed to an elementary course in American History where presumably everyone in a certain grade level will be attending.

A. Yes. Of course, that becomes very expensive, and an administrative decision has to be made as to whether a school program can afford to continue classes, let's say, that are fewer than a dozen pupils. One routine that is sometimes used is to teach multi-level courses such as first and second year Latin within the same class period, so that isn't automatically a limiting factor, but indeed that does occur, and if there are classes with limited enrollment and if there is no alternative to assigning them to a room, then it ties up a room that may be suitable for 35 for only a dozen.

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[R. I. 1336-1339, Vol. 13] Q. But regardless of who proposed it, it was the Dayton Board of Education that adopted it, and that was the date that it was adopted, is that not correct?

A. I believe that's the date. I don't have it before me.

Q. The policy has three priorities, does it not, and I think we are all familiar with those under the evidence.

I understand from your direct examination that you have proposed, and the Board hasn't disposed, to eliminate the second priority, is that correct?

A. That's correct.

Q. And that priority is a priority for strictly educational purposes, is it not?

A. The second priority?

Q. Yes.

A. Is for course selection in another school, yes.

Q. And, of course, that priority is open to blacks as well as whites, is it not?

A. Yes.

Q. And it, like the other aspects of this plan, is operated on a first-come, first-serve basis?

A. I would say substantially that is correct, yes.

Q. You referred to that in your direct testimony as the escape hatch of course selection.

Is that the way you characterize it?

A. Yes, I would characterize it that way.

Q. Aren't there any courses offered in certain schools which are not available in other schools?

A. Yes, obviously. For example, Patterson is an example of that. But I think the reason that the staff was concerned about this, and my executive committee, as I recall, discussed this on several occasions, and noted that the students who were availing themselves of this option were nearly invariably white and transferring to white schools, and this indicated to them that there was more operating than just course selection.

Q. Were there no blacks attempting to attend different schools to receive special courses that they couldn't obtain in their own neighborhood schools?

A. I believe there were. I don't have those statistics before me, but I believe they are an exhibit.

Q. Out of the 1,063 students which are or who are presently attending schools other than their own neighborhood schools under the freedom of enrollment, only 60 students are non-minority students, isn't that correct?

A. That's correct.

Q. Now, if I might refere you to — before I do that, the freedom of enrollment policy was modified on January 3 of this year to provide free transportation, wasn't it?

A. Yes, sir.

Q. Now, let me refer you to Defendants' Exhibit AD through I.

Referring first to Defendants' Exhibit AG.

A. I think it is here.

Yes, sir.

Q. This is a report of freedom of enrollment programs statistics for '69-70 and '70-71; isn't that correct?

A. Yes.

Q. And this, as similar exhibits, simply reflect approvals or disapprovals that year rather than the total students attending under the program, isn't that true?

A. That's my understanding, that this would reflect the applications actually handled for the year given.

[R. I. 1353, Vol. 13] A. With the notable exceptions I have given, there has been considerable effort to desegregate the staffs, yes.

Q. And in the present school year, at least as far as the records available indicate, only 184 students out of a total student body of over 50,000 students were unable to attend the school of their choice because of the lack of classroom space?

A. Within the context of the prior testimony on that, yes.

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[R. I. 1355-1357, Vol. 13] Q. I show you Plaintiffs' Exhibit PX-5A. With reference to the assignment of both black and white teachers, new hires and transfers, could you give me what PX-5A shows with relationship to their racial assignment?

A. For 1968-'69 only?

Q. Yes.

A. It shows that Negro teachers assigned to schools with predominantly white enrollment numbered 40 and white teachers assigned to the same white schools numbered 223, and Negro teachers assigned to schools with predominantly Negro enrollment numbered 95, and white teachers assigned to schools with predominantly Negro enrollment numbered 64.

Q. Now, these are teachers; is that correct?

A. These are teachers.

Q. And is this the kind of study that later developed by which you became aware of the continuing extent of the factulty segregation?

A. Yes, it is obvious in terms of the new hires and transfers for that year the predominating pattern was the assignment of black teachers to black schools and white teachers to white schools.

Q. Now, you testified that you hired a certain number of black principals over that first summer you were here.

A. Yes.

Q. And then you assigned all principals in all schools for the fall; is that correct?

A. Yes.

Q. And did you for the first time assign a black teacher out of West Dayton?

A. A black administrator.

Q. Black administrator, I beg your pardon.

A. Yes, across the Miami River.

Q. And did that single assignment eradicate the pattern of identifying schools as black or white by the assignment of administrators?

A. By no means.

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Q. Now, with respect to PX42 about which reference has been made on cross-examination, could you tell me what PX42 is?

A. This is the assignment of non-teaching personnel by categories and schools and race.

Q. Now, you testified on cross-examination that there was a distribution on a racial basis in the school system.

A. Yes.

Q. Could you tell me what that distribution is?

A. In the high schools, for example, the assignment of non-teaching personnel alone would identify the school as white or black with respect to its pupil enrollment.

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[R. I. 2107-2111, Vol. 20] Q. Are you aware of instances or practices of the State Department of Education whereby accreditation or chartering of particular schools or school districts has been withheld or threatened to be withheld by the State Department of Education?

A. Yes. At the time that I joined the Department, the Legislature had just required that all districts of both elementary and high school – there were about 50 elementary districts – that were in the process of being notified of the necessity to join with another district in order to remain chartered. There was a reduction in the number of school districts for each of the years that I was in the school district by consolidation, and in some of those cases, this would be the result of inspection of schools unable to meet minimum state standards, and therefore required to be consolidated with another district.

Q. In general, Doctor, if a school district did not meet State educational criteria, or if a particular school did not meet educational criteria, the State Board of Education had the power to revoke the charter, is that correct?

A. That's correct.

Q. Or to fail to grant a charter?

A. Yes.

Q. Would its failure to provide equal educational opportunity be greatly dissimilar of its failure to provide other educational opportunities in your opinion?

A. No. Indeed, in the opinion of the Attorney General, that was a definition of the law, that the State Board and the State of Ohio were required to report them.

Q. That was the 1956 Attorney General opinion that has been referred to already in this cause?

A. Yes.

Q. And the State Board for various educational reasons did so act, is that correct?

A. Yes.

Q. Now, with reference to any particular city-wide schools, did it act in that regard?

A. Indeed, in the creation – well, let me state just for city-wide schools and discuss a situation in Middletown, Ohio, where an exception was asked with respect to the construction of a new school and the proposed chartering of that school which would have resulted in two high schools in the city, one predominantly white and one predominantly black.

The request was that the schools be chartered as one institution on two campuses so that all students would go to

both schools and therefore both institutions would be integrated, and such was approved.

Q. If they had been chartered separately, then they would have been segregated schools? They would have each had all the grades, is that correct?

A. That's correct.

Q. So the State Board did in effect adjust, which might be a word that could be used, its accreditation criteria in such a way as to set up a pairing of schools in effect, is that correct?

A. That's correct.

Q. With regard to the State Department of Education's advice to the Dayton Board that its present middle school plan was racially in violation of desegregation requirements, did the State Board take action under their authority to deny accreditation to those schools?

A. No.

Q. Could they have done so?

A. In my judgment, under the premise of the Attorney General's opinion referred to earlier, yes.

Q. And under the practices which they engaged in, you were setting up in effect a new school, were you not?

A. Yes.

Q. And you made Whittier, for example, a middle school? That was a new school that had to be chartered separately or differently?

A. With the exception that the law in 1966 provided as I think I testified earlier, to the fact that school districts are now chartered in toto, so that this was not a chartering matter, but it still is a matter of meeting minimum standards regardless. The whole district, in other words, is liable, not just a single building.

Or to put it another way, if a single building is not in compliance with the requirements of the State, then the whole district is in effect liable to lose its charter.

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[R. I. 2135-36, Vol. 20] [Following is proferred testimony of Wayne M. Carle] A. Metropolitan Dayton. I think it was 52,000 were going to school by bus and perhaps four to five thousand as far as the public school pupils are concerned were within the city and the rest would be outside the city.

Q. Now, a lot of those would be in rural areas or what, heavily urbanized areas?

A. All of the metropolitan area would certainly have to be regarded as urbanized. There are conditions within the Dayton School District that are identical to those that would exist in many of the suburban areas. For example, the City of Kettering or the City of Oakwood, when we are driving down the street between Dayton and Oakwood, there is no difference other than the corporation sign or difference in the spacing of the housing of the schools. On the other hand, we have some areas within the school district that would be characteristic of some more suburban areas; that is, the area in the Meadowdale or Belmont area would have some characteristics like those of unincorporated or perhaps more peripheral areas of the metropolitan region.

Q. Now, you mentioned Meadowdale. How many pupils do you transport at Meadowdale?

A. At the high school level, something over 850 pupils are transported to Meadowdale High School. There is also transportation to some of the elementary schools in the same area. This would include, for example, Meadowdale Elementary where approximately 85 pupils are transported. There are other schools, you understand, in that cluster of schools in which there is also transportation. I just gave an example.

Q. Do you transport children to Lewton School?

A. Yes, Lewton is in the far east side of the district and something over 400 pupils are transported on what we call D-contracts. That is, parent transportation is provided.

Q. Many of those are Board owned buses?

A. Yes. To maximize the efficiency of the small number of Board owned buses, they are concentrated at one area of the city, largely in the east.

Q. Fairview High School, does it have some students transported to it?

A. Yes, Fairview has in the range of 300 pupils transported.

Q. Belmont?

A. Belmont has had a large number of pupils, something in the range of 680 or more.

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[End of proffered testimony of Wayne M. Carle]

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[R. I. 1374, Vol. 14] Q. Dr. Carle, are optional zones a sound administrative device for assigning pupils to schools?

A. I wouldn't characterize them as useful, no.

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T. TESTIMONY OF LLOYD LEWIS, SR.

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[R. I. 1383-1385, Vol. 14] Q. If you know how they were assigned, tell me the source of your knowledge.

A. If you were a student in Garfield or Willard, it was automatic. In my case, my children were in Wogaman. We could apply for other schools.

Q. You say you could apply for –

A. My children stayed in Wogaman. That was it, in that case.

Q. All right. When they came to high school age, do you know where their records were sent at that time?

A. Automatically they were sent to Dunbar.

Q. All right. And did your children attend Dunbar?

A. No. I applied for Roosevelt.

Q. And you say you applied. Did you ask that there be a transfer of your children to Roosevelt?

A. Yes.

Q. But your children's records were sent to Dunbar, is that correct?

A. I have no knowledge of where they were sent. I was aware of that fact, and I saw to it that they went to Roosevelt.

Q. So you asked for a transfer to Dunbar from Roosevelt?

A. To Roosevelt.

Q. In working with the students in the community, did you also work with teachers in the schools?

A. Yes.

Q. All right. Were you familiar with the general practice to the assignment from Dunbar from your work in the community?

A. Yes.

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Q. From your work in the community, did you have knowledge in general of how black children got to Dunbar?

A. Yes.

Q. And how was that?

A. Automatically they were sent if they were black. See, that was the design of the school, the same as Christian Atticus in Indianapolis.

Q. Were you a member, sir, of an organization called Frontiers?

A. I was.

Q. Did you hold some positions within the organization?

A. I was Chairman at one time.

Q. All right. Are you familiar with any actions taken by the Frontiers, vis-a-vis the Dayton Board of Education with respect to integration of schools?

A. I was.

Q. And had that organization called upon the Dayton Board to take action in that regard?

A. I don't understand the question.

Q. Had the Frontiers asked, demanded or what-have-you, that the Dayton Board of Education take steps toward integration of the Schools?

A. Definitely.
Q. All right.

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[R. I. 1389-1390, Vol. 14] Q. And when were your own children in Wogaman Elementary School, Mr. Lewis?
A. It must have been in the year – they went to high school in '40, so you would have to go back about eight years.
Q. So it would be in the late '30's?
A. Early '30's.
Q. Early '30's?
A. Yes.
Q. And at that time was Wogaman essentially an all black elementary school?
A. No. Wogaman had integrated.
Q. Do you have any idea of what the composition of the student body of Wogaman was back at that time?
A. It was largely white at that time.
Q. All right. And you asked that your children go to Roosevelt High School, and that's where they went, isn't that correct?
A. In 1940, right.
Q. Now, I think you have indicated that you don't know where the records for your own children were sent after they completed their elementary education, isn't that correct?
A. That's correct.

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U. TESTIMONY OF GORDON FOSTER.

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[R. I. 1395, Vol. 14] Q. Dr. Foster, in connection with your teaching at Miami of Ohio, did you have occasion to work in any of the schools in the Dayton City School System?
A. Fairly extensively in this general area, the Metropolitan area. I supervised student teachers for three years, I think.

I think during that time it was all – well, not all but many of the districts in this area, particularly Kettering and I can't remember whether I had any in the City of Dayton or not, but in this general area I got fairly familiar with schools. I taught extension classes for the University at Roth High School, I believe, for two years, and then at Wright State for a year when they opened that facility and transferred the extension classes over there.
Q. You say you taught at Roth. That was at night?
A. They had evening and afternoon classes both. I believe mine were in the late afternoon, and I have also taught extension classes in connection with some of the suburban schools. Trotwood, for example, is one I can think of, and in connection with my duties at Miami University for a period of four or five years, I worked quite a bit with Dr. Purdy in the Bureau of Educational Field Services and did quite a bit of work in this general area in studying school district education.

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[R. I. 1396-1401, Vol. 14] A. Well, I have been progressively Assistant Professor of Education, Associate Professor and currently full Professor of Education. I was Chairman of what would amount to the Department of Educational Administration. I am not currently, but I was for about three years Director of a Federally funded program to train administrators for multi-cultural schools under the Educational Professional Development Act. In our case, it was primarily, although not completely, for black administrators in the southeast part of the country. I have been an Associate Director and for the past four years, I believe, Director of a Federally funded program, the Florida School Desegregation Consulting Center which is funded under Title IV of the Civil Rights Act to assist the schools in Florida in problems and matters of desegregation.
Q. That's the Civil Rights Act of 1964?
A. That's correct, sir.

Q. Dr. Foster, have you published in the field of education and in the field of desegregation?

A. I have, yes.

Q. Can you give us just a few on the list of your major publications?

A. Most recently in desegregation, I had an article in September in the Urban Review on urban desegregation. I currently am negotiating with the Harvard Education Review on an article again on urban desegregation which is in draft form and should be published, I believe, in May although that is still not decided. I have been either editor or coauthor or contributor to a large number of desegregation studies both in Florida and around the country. Some of these are under Title IV and the desegregation center in Florida. Others are under different banners. I have also been author or editor or contributor to many what we call school survey studies or reports. I did work, as I have stated, for the Bureau of Educational Field Services with Dr. Purdy of Miami. I have done several studies with Dr. Einman who has been with the State Department who also worked there. I worked for the Associated Educational Consultants in Pittsburgh for three or four years and worked on several studies in the State of Pennsylvania for them of a like nature.

Q. Are you author of any part of a book dealing with education in the State of Ohio?

A. Contributor of a chapter on the law and curriculum in a book edited by Dr. Simpson who used to be at Miami in Ohio published by the Andersen Company in Cincinnati.

Q. What is the title of that work?

A. I have it in my vitae.

MR. GREER: Ohio and School Law.

THE WITNESS: Ohio and School Law. It is sort of a layman's paperback for teachers and so forth.

BY MR. LUCAS:

Q. Dr. Foster, I assume your vitae will reflect membership in usual educational and professional associations; is that correct?

A. I believe it does, yes.

Q. What desegregation studies have you shared major responsibility for?

A. Well, quite a few. If I could break those down into sort of different types, as Associate Director of the Desegregation Center in Florida, the Center was involved in almost all of the court cases in Florida desegregation. Florida has 67 districts which are really county districts. They are coterminus with the co-political boundaries and I don't know the exact number, but I think about 40 of those have been through court order or are currently under court order. The Center was involved in almost all of those especially the big city ones, and we were also involved in several studies in connection with HEW compliance under Title VI – it is now called the Office of Civil Rights – when they were involved negotiating more than now with the different systems as far as compliance.

Then, as a private consultant for different organizations and growth, I have been involved in several cases some of which I have been an expert witness and some of which I haven't. The ones in which I have been a court witness have been Spanger vs. Pasadena in which I was a consultant for the Justice Department. I didn't appear in court, but I worked on the Houston Desegregation case for the Justice Department. I was a consultant for the United Steel Workers in Cisneros vs. Corpus Christi.

Q. Excuse me, Dr. Foster. Let me make it clear. Was I involved in any of those three cases?

A. Not that I remember, no.

Q. Thank you. You were retained by the United States Department of Justice in those cases?

A. That's right.

Q. Except in Cisneros, and in Cisneros you were employed by whom?

A. Actualy a law firm in Houston, but the United Steel Workers footed the bill for the plaintiffs. They were the ones that supported the suit, and in Mississippi I was in the Marshall County case.

Q. Was that for private plaintiffs in that case?

A. I believe that was the legal defense fund.

Q. And you were associated with that?

A. I was, yes. Holly Springs, I believe, was also part of that same suit. Holly Springs was a separate district.

Then, also in Mississippi the Humphries County case was not so much, I believe, as I remember it, a pupil assignment case. It was assignment by testing case.

Q. Was that with the Department of Justice?

A. I believe so, yes.

Q. All right.

A. I can't remember for sure whether that was a legal defense fund. I think the Department of Justice. Then, in Virginia in the Petersberg case I was a witness for the court paid under court order by the City of Petersberg. I was an expert witness for the Legal Defense Fund in the Richmond case, Bradley vs. Richmond case. It was not the metropolitan part but the original suit. I was witness for the Justice Department in the Norfolk case, Brewer vs. Norfolk. Well, it changed but I think at the time I was in it it was Brewer.

Q. It was.

A. And in Carolina County case in Virginia, I think for the NAACP – no, for the legal defense fund.

Q. And most recently, were you involved in the Detroit litigation?

A. I have also been involved with the NAACP in the Detroit litigation. I was also involved in Memphis is Earthcross vs. Memphis as an expert witness, and this past summer I spent six or seven weeks in Detroit and in Lansing working as a member of the Roth panel on metropolitan desegregation and in that case paid by the State Department of Michigan.

Q. Have you been appointed as a court expert in any case involving school construction?

A. Well, in several cases – would you say that again?

Q. Was there any case where the Court or the title for a center appointed you with respect to school construction in Florida?

A. Well, the Court in Jacksonville or Duval, Jackson vs. Duval County case appointed the center to make a detailed study in which building was involved, construction was involved and, of course, in almost every case construction is involved to some degree.

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[R. I. 1402, Vol. 14] Q. Dr. Foster, you were the author or supervisor of the preparation of the plan of desegregation for the City of Dayton; is that correct?

A. That's correct.

Q. In connection with the separation of that plan, can you tell me how much time you spent in Dayton?

A. As I remember it, I had one person working with me on that, Mr. McDonald, now Dr. McDonald, and the two of us spent a total of something like 11 or 12 days in the city plus a good deal of time in Miami, but actually on site, I think it was 11 or 12 days, and I spent all but – well, I think all but four of those days. I spent seven or eight days on site at that time.

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[R. I. 1419-1420, Vol. 14] Q. All right. You listed optional attendance zones.

Is there any relationship between those two?

A. Yes, sir. Very similar. It is partly a semantic situation. But when you have an optional zone, in almost every case it has to be carved out of one of the two zones in which it is optional, one of the two attendance areas in which it is optional, and therefore it automatically becomes a sort of dual zone or, as you will, an overlapping zone.

Q. Dr. Foster, have you at our request studied the pattern of new construction in the Dayton School System?

A. Yes, I have. When you say new, what I have studied primarily is, from 1950 to the present.

Q. What has been your observations of the facts of the pattern of school construction, new school construction in Dayton, from 1950 to the present?

A. May I refer to my notes?

Q. Yes, please.

A. In making an analysis of new construction from 1950 to the present, I have before me Plaintiffs' Exhibit No. 4 and also the overlay PX-53A, which had to do with new construction and additions.

I made a slightly different analysis than the one presented in PX-4, in that I carried it through to figures for 1972-'73, whereas if I'm not mistaken PX-4 used attendance figures for last year, for the '71-'72 year.

What I found in new construction was, to summarize briefly, there were 24 schools opened from 1950 to the present. Out of the 24, 22 opened at 90 percent or more black or white. That is to say, only two of the 24 schools opened as facilities without being either 90 percent white or 90 percent black.

Of that 22, I found that seven schools opened 90 percent or more black and remained so today.

Most of them are at either the 99 percent or 100 percent black level.

Six of the schools opened at 90 percent or more white and remained so today, and of the 22, nine schools opened at 90 percent or more white, and today these nine schools range from something like 17.7 percent to 96.7 percent black.

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[R. I. 1422-1423, Vol. 14] Q. In response to the Court's inquiry, Dr. Foster, you did say it does have something to do with segregation?

A. That's correct.

Q. Does it have something to do with school segregation?

A. Yes, sir, in my opinion.

Q. Dr. Foster, in counting the schools for new construction, did you count, for example, the Jefferson Primary as a new school?

A. I believe I did, yes, sir.

Q. And the same would be true for the other primary units?

A. Yes, but I think there was one case that was sort of questionable and that was Allen Primary which in some document is listed as a primary unit and in some merely as an addition to Allen. In my data I counted it as an addition rather than as a separate unit.

I believe it has the same administration addition in the regular unit.

Q. All right. Can you identify for me the seven schools which opened 90 percent or more black and remain so today.

A. All right. Residence Park Primary opened in 1966 at 96.5 percent black, and in 1972 it was a hundred percent black.

McNary Park opened at 100 percent black in 1964 and is still a hundred percent black.

Jackson Primary opened in 1960 at 99.9 percent black and is currently 99.7 percent black.

The new Dunbar High School opened in 1963 at 92.7 percent black and is currently 100 percent black.

The Carlson Elementary School opened in 1958 at 95 percent black and is currently 99 percent black.

The Louise Troy facility opened in 1957 at 100 percent black and is 99.1 percent black in 1972.

Miami Chapel, which is adjacent to the Louise Troy facility, opened in 1953 at 100 percent black and is currently 99.8 percent black.

These percentage figures at opening, I took from Plaintiffs' Exhibit PX-4, for the most part, and in some cases, I believe,

or I think in all cases, they are substantially correct. There may be a percentage point or so deviation.

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[R. I. 1425-1428, Vol. 14] THE COURT: Let me put the question to you another way. Do you build schools where the children are or do you build schools where you think the children should be? That is, do you build the school someplace else because it is a nonsegregated neighborhood and then transport the children there, or do you build them where the children are?

THE WITNESS: Well, I think school systems have done both.

THE COURT: Yes. I understand. But I would like you to relate it to the Dayton situation.

The schools you have named are in an area that is predominantely black and has been, according to the census tracts, for quite some time.

I ask you again, would you build schools there or would you build them someplace else and move the children to the schools?

THE WITNESS: Well, in terms of desegregation I would consider very seriously not building them where the children are but considering other possibilities of site selection, because I think that in building them where the children are the Dayton System has managed to lock in and compact both the school population and the residential population in the inner city, and at the same time to promote housing segregation and school segregation in the far-flung suburbs.

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BY MR. LUCAS:

Q. Dr. Foster, would you identify the six schools which opened 90 percent or more white and remain so today?

A. All right. These would be Shoup Mill, which opened in 1958, 100 percent white, now 3.8 percent; Belmont High School —

Q. Excuse me. 3.8 percent black, is that correct?

A. I'm sorry. 3.8 percent black.

Belmont High School, which opened no percent black and is currently 5.2 percent.

MR. GREER: While we are giving those, I suppose we ought to have the dates. 1956?

A. (Continuing) I'm sorry. Belmont was 1956 and Shoup Mill was 1958.

Meadowdale Elementary in '57, which opened no percent black, and is currently no percent black; Horace Mann Elementary, opening in 1954 at no percent black and is currently 3.1 percent black; Orville Wright opening in '52 at no percent black and currently 8.1 percent black; and Eastmont opening in 1955 at no percent black and currently 0.7 percent black.

Was that six?

MR. LUCAS: I think so, Doctor.

THE COURT: Yes.

BY MR. LUCAS:

Q. Directing your attention to Meadowdale High School, is it just slightly over the ten percent figure you used?

A. My data give it at 10.6 percent black this year.

Q. And it opened at 0 percent?

A. That's correct.

Q. And Belle Haven?

A. Belle Haven opened in 1954 at 0 percent black and is currently 17.7 percent black.

Q. Dr. Foster, turning your attention now to the building additions. Did you examine those?

A. Yes, I did, sir.

Q. Will you give us the results of your examination?

A. All right. Again, in compiling these, I used Plaintiffs' Exhibit 4, and also the Ohio State, the recent Ohio State report, which did list the dates of all the buildings and additions as sort of a cross-reference.

THE COURT: Before you do that, Doctor, I would like

to address another question, because I must confess I am truly confused with this line of testimony.

If there is something wrong with opening a school that is 90 percent black and something wrong with opening a school 90 percent white, then I assume the next step is that schools should be selected that are more equal. And so let's assume for a moment that these 13 schools were all located in sites where they are precisely 50 percent white and 50 percent black, or in view of the city's population, 30 percent black and 70 percent white.

Every one of these schools was open at that point. Within five years, by reason of situations over which the Board had no control, they all were then 100 percent white or 100 percent black.

Would you describe that then as a segregative intent by the Board?

THE WITNESS: Well, I think intent is hard to prove in some cases, but I think it might be described as a mistake in judgment.

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[R. I. 1437, Vol. 14] Q. Thank you. Would you go now to the building additions and the inquiry which you made?

A. According to my figures, if they are correct in terms of building additions, in terms of 1950 to the present, there were 62 separate school additions made in the Dayton System.

Q. Now, Doctor, just a preliminary thing. If there were two separate additions made to the same school, is that included in your 62 figure?

A. That's correct. Some of these are multiple listings, some more than two. Some may be three or four.

Q. So, if they made an addition in 1954 and another one in 1960 and another one in 1968, you would have three individual notations although there might be only one school listed?

A. That's correct.

Q. And that's how you get your 62 total?

A. That's correct.

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[R. I. 1438-1442, Vol. 14] Q. All right. Would you continue with your analysis?

A. All right. Out of the 62 additions made since 1950, 59 of these were made to schools which were 90 percent or more black or white. Out of the 59, there were 52 additions which were made to schools that were 99 percent either black or white at the time of the addition.

Q. All right. Did you break down any of those additions, in terms of their present situation as well?

A. Yes, I did. There were ten additions which were made to schools 95 percent or more black which remain so today.

Q. That's a different standard. That's 95?

A. That's correct.

There were 36 additions made to schools that were 90 percent or more white which remain 90 percent or more white today. There were ten additions made to schools 90 percent or more white which remain 80 to 90 percent white today. Remain there would be incorrectly used. I should say which are 80 to 90 percent white.

Q. I won't challenge you on that ground, Doctor.

Did you examine the closing of schools in the Dayton School System?

A. Yes, I did.

[R. I. 1439-1442, Vol. 14] Q. Did you make a separate analysis of that or was the analysis made in conjunction with other studies in particular areas?

A. Well, both but I do have a separate analysis of this criterion. The criterion works in a sense in both directions. You can keep schools open to maintain segregation, and sometimes when you close schools, what you do with the pupils who have been assigned to the schools being closed is an

important factor. In terms of keeping schools open to maintain segregation, I had access to the Touche-Ross and Company document made in 1972.

Q. Excuse me, Doctor.

A. I don't know whether that has been submitted as evidence or not.

Q. I believe it has. What is the Touche-Ross study?

I think it has been referred to several times. Can you tell me what it is?

A. I believe the title, at least, as I have it is the Business Operations Review Report.

THE COURT: Mr. Lucas, do you have an exhibit number on that?

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MR. LUCAS: It is Exhibit 56, Your Honor.

THE WITNESS: There is a feeling among many people, particularly school board members around the country, that schools are pretty inefficient and inefficiently run in their business operation, and it is quite a sound and reasonable technique these days to ask business people to come in and evaluate your operation and help you in terms of suggesting ways if money can be saved because finances in education are very important as always, and this is my understanding of the background of this study. The part I was particularly concerned about was the recommendation to the school system that they could phase out nine average schools and save something in the neighborhood of $700,000 to $900,000 annually by so doing. When I made the desegregation study in December of 1971, one of the recommendations in our report was also to close three elementary schools and one secondary school, and the reason we didn't recommend more was because we really didn't have time and that wasn't our major purpose. We didn't have time to analyze the buildings and so forth, but we were aware of a current situation where the projection for students in Dayton is one that is declining and the current situation of over capacity being available at both the elementary and secondary level on a city-wide basis, and in this situation where you have as in almost all instances considerable number of very old school buildings, I think it is intelligent to look at the operating expenses and so forth and see if any of them can be closed out. I also had access to Plaintiffs' Exhibit 61 which is a report that Mr. Weinman made in April of 1972 to the Superintendent in regard to our recommendation in the desegregation study of closing Hawthorne and Fort McKinley and Washington Elementary Schools. Out of reading these and also my contact with Dayton in December of 1971, it is my opinion Dayton could very definitely close some obsolete schools which were, for the most part, segregated schools and reassign the students so as to promote desegregation. There was one instance which I feel is a good example. There may be others of the Dayton System closing schools and then reassigning students in such a way that promoted segregation rather than desegregation when they very definitely had options that could have done the other. This was in 1962 in the case of closing Garfield and Willard Elementary Schools. It is my understanding that the students from Garfield and Willard were reassigned most of them to MacFarlane which opened in the same year and which, I believe, was the old Dunbar High School which was at that time 100 percent black which at least in 1963, the following year, had 100 percent black faculty. Students were also assigned to Irving which was 96.6 black, and in 1963 had a 50 percent black faculty, and to Miami Chapel which was 99.6 percent black and in 1963 had a 93 percent black faculty.

Now, if you look at the map very briefly in terms of distances, if you look at MacFarlane and Irving and Miami Chapel which are in sort of the south central area of the city, it is possible that these children could have been assigned to Patterson or to Hawthorne. That's Patterson Elementary, of course, or to Longfellow which are about the same distances from the schools being closed and which in 1963, the year after, were white schools. Patterson was all white and Hawthorne was all white and Longfellow was 6 percent black or predominantly white.

All I am saying in this example is that here we have closing of schools in which students are reassigned and in their reassignments sent to situations in receiving schools where segregation is either increased or maintained when they could be sent to equal distance schools in which desegregation would be effected.

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[R. I. 1443-1447, Vol. 14] Q. And what exhibits did you refer to in that connection?

A. I believe PX-108 which is a letter from Walt Spurgen — I beg your pardon. I believe that is a memo to Walt Spurgen from Mr. Ruhly dated September 18, 1972 in which essentially Mr. Ruhly gives the present location of portables in Dayton and a sort of history of the use of portables in the system.

Q. All right. In general before you get into specifics, how in systems which have been identified as segregated, what are the variations in practices which have been used in terms of portables or placement of portables?

A. Well, as in all of the other criteria that we are discussing, you can use portables as much as you can use school additions which is what they are, but they are temporary ones to either improve increased desegregation or maintain or increase segregation, and in many cases school systems have used portable buildings again much in the same way they do additions to increase or maintain segregation.

Q. Dr. Foster, let me give you a hypothetical example. Assume that a particular black school is becomming more and more overcrowded and there is available space in predominantly white schools and the School Board locates the portable units at the black school site. Is that hypothetical situation the type of situation you have described happening in other school systems?

A. Yes, it is, and the difficulty is that the protables tend to be frozen quite often in the location and then tend to maintain the segregated status.

Q. Can it also work the other way where you have capacity in black schools and overcrowded white schools with the portables being locates adjacent to the white schools rather than reassigning students to the other school districts?

A. Yes, and it very often works that way and I think in terms of Dayton this is done a good deal less than in many cities I have worked with.

Q. Can you tell me what your examination of PX-108 indicates?

A. In terms of present location of portables in 1972-'73, according to this memo, there are eleven portables used in the city. Three units are located at Cornell Heights Middle School which currently is 80.5 percent black. Four units are located at Orville Wright Middle School which is 8.1 percent black. One unit is located at MacFarlane Middle School which is 99.6 percent black, and three units are located at Washington Elementary School which is 15.3 percent black.

Q. That's the present locations?

A. That's right. These figures range from in terms of desegregation or segregation from 8.1 to 99.6, but in comparison to the city as a whole, the school system as a whole which I believe is around 45 percent black this year, it would appear that all of these locations are racially identifiable schools.

THE COURT: Dr. Foster, do I understand that any use of portables is suspect?

THE WITNESS: Oh, no. I didn't mean to infer that. I think it is like the other criteria. It is simply a question of how you do it.

THE COURT: If you do it in a school that is predominantly white, it can be asserted it is being done to retain the students there. If it is done in a school that is predominantly black, the same argument can be made.

THE WITNESS: Right.

THE COURT: Then, in all these criteria the School Board is faced with the option of transporting; is that right?

THE WITNESS: Well, not in all.

THE COURT: Well, in lieu of this.

THE WITNESS: Sometimes you have alternative walking situations, but I would guess in most of them you would have the alternative, yes, of either portables or transportation.

THE COURT: Well, in the case of additions, you could assert that it is additions or transportation.

THE WITNESS: Again not always but quite frequently, yes.

THE COURT: How do you regard, then, the basic situation of the school system that has portables and has built additions?

THE WITNESS: You mean in terms of the wisdom of making this kind of decision?

THE COURT: No. Let me use the word I used before. Is that situation suspect?

THE WITNESS: Oh, very much so, yes, and I think in terms of building additions particularly so in Dayton.

Q. Let's go into the historical locations of these portables.

A. The data given in the memo indicated that in terms of putting in new portables starting in 1966 with two units at Franklin and continuing through 1971, some of these would be the same units, only eight moved. At the time of their installation, the 15 examples given or cases given in the memo to Mr. Spurgen, the percentage black at Franklin in 1966 was no black. One unit went into Jackson Primary in 1967, 99.7 percent black. One unit went to Jackson Elementary in 1967, 98.6 percent black. Two went to Cornell Heights in 1971 at 72.3 percent black. One at Cornell Heights in 1969 at 59.1 percent black. Three at Washington in 1969 which was then 16.6 percent black. Three at MacFarlane in 1969 which was then 99.9 percent black, and two at Weaver in 1969 which was 100 percent black.

So, in all of the locations mentioned which is a total of 15, these would be at the time of installation racially identifiable schools with the possible exception of Cornell Heights which was 59.1 percent black in 1969.

Q. Dr. Foster, would you at this point tell me if you made an inquiry into the question which I think related to the construction issues of site selection?

A. Yes.

[R. I. 1448-1449, Vol. 14] Q. And what was that inquiry?

A. In terms of the use of site selections to maintain segregation, in the new construction sites from 1950 which we have already discussed to the present, many of these have helped to promote and to impact and lock in segregated or isolated situations either in the inner city or in the suburbs, and I think this is true in terms of both school segregation and housing segregation, that is, in terms of its effects. First of all, in the area of the white suburban expansions which are farthest from the center of the city which is all black, and these were, of course, more inaccessible at the time of construction than they are now. We have Valerie which was built in 1966 which is almost at the extreme north of the district. We have Meadowdale High School built in 1960 and Meadowdale Elementary built in 1957 to the north of the district. We have Shoup Mill built in 1958 and to the nearly extreme north. The south and east of the furthest white suburban expansion, we have Eastmont, on the extreme east built in 1965. We have Wilbur Wright to the northeast built in 1952, Horace Mann to the southeast built in 1954, and Belmont High School in the southeast built in 1956.

Now, contrary-wise, in the inner city during this time there were a couple of examples of schools which were built into locked-in situations in terms of segregation, and in fact these schools were surrounded by other schools which were all black. That would be McNary in 1964 and Jackson Primary in 1960.

Q. Dr. Foster, in your experience, use of the primary unit in close proximity to elementary schools, has this been a matter reflective of segregation practices in your experience?

A. Yes. It is in a sense very much nothing more than an addition. They are on the same campus and for all practical purposes they are really one school.

Q. What effect does this have on the existing racial concentrations?

A. Well, it tends to secure it and to further insure that those schools are going to remain segregated and that the system as a whole is going to remain segregated.

Q. Do they tend to have the same boundaries as the existing elementary school?

A You are talking about the primary?

Q. Yes.

A Yes, they do.

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Q. And Dr. Foster, you identified some examples of schools located further east away from black population centers?

A. That's correct.

Q. And you have also given us some examples of schools at the furthest extreme from white population areas, or in the middle of the central city core?

A. That's correct.

Q. What effect does a pattern of construction of that nature, these two extremes, have in terms of patterns of metropolitan development, in terms of both school and residential segregation?

A. Well, I think it encourages residential segregation in terms of making schools that people know are going to be white, unless some sort of desegregation plan is instigated, and they have some sort of security in buying into a school like that if they can afford to.

And also, in the inner city, they designate those school as locked-in black schools, which if they are going to be used are going to stay segregated. I think the Court's language for this, which even lay people can understand, was something like, as I remember, a loaded game board, and it sort of sets up that kind of situation when you attempt then to desegregate.

Q. I assure you, Dr. Foster, that laymen are not the only ones who have trouble understanding court language.

MR. GREER: Move to strike counsel's comment.

THE COURT: Come on, let's go.

That is not totally incorrect, though.

Let's go.

BY MR: LUCAS:

Q. Dr. Foster, you mentioned one of the things you looked for in terms of pattern or segregation. Did you note some instances of that from your view of the records in the Dayton School System?

A. I'm sorry?

Q. Use of transportation as technique of segregation. Did you note some instances of that?

A. Yes, I did. Some very minor ones, and I think these have been talked about before in the testimony. The question of the VA students being transported from what would not be the Carlson attendance area, the problem with the Edison fire, which I believe was in 1968, and that was corrected shortly thereafter the following year.

MR. GREER: Can I make specific my continuing objection when we are simply reviewing evidence that is already before the Court?

THE COURT: Gentlemen, may I advise both counsel that the Court has been instructed exhaustively, and I do use that term, as to the Shawan Acres situation, as to the Veterans Hospital, and as to the fire at Kiser School.

May I ask that we refrain, both sides, from future witnesses as to these subjects, and pass on to something which the Court has not heard testimony on.

MR. LUCAS: All I am asking the witness is if he found some instances of that. I didn't intend to go on.

THE COURT: Well, I'm afraid unless we are stopped, it's going to happen, Mr. Lucas.

Let's go on to something further.

BY MR. LUCAS:

Q. All right. You did mention the VA Hospital. Is that one of the optional areas that you studied, Dr. Foster?

A. Yes.

Q. All right. And what optional area is that? Perhaps we can refer to that out of order.

This might be an appropriate time.

A. That would be the Residence Park-Jackson optional area, which would be more in evidence on the elementary, 57.

Q. Do you want to step to the map, Dr. Foster. Would you indicate it on the small map? Stand back so the Court can see the map.

A. This would be the hatchmark over the green area, which would lead into Jackson on the east and to Residence Park on the north.

[R. I. 1453-1455, Vol. 14] Q. All right. How did you understand that the option worked between Residence Park and the Carlson area?

A. My understanding was that the students, and I don't know the exact date of the inception of this optional zone, but it is given on the data that was used to make this overlay.

The students have the alternative of going either into Jacksonn or into Residence Park.

We have studies exhibits for the Defendants, DXCP, which I believe gave the attendance at Jackson from 1957 to 1972 for the VA children, and that figure was zero. Defendants' Exhibit DX –

Q. Excuse me, Dr. Foster. What was the racial composition of Jackson?

A. Jackson in 1951 was 35.9 percent black.

Q. And in 1957?

A. In 1957 I don't have the figure. In 1963 Jackson was 98.5 percent black.

I believe Mr. Rivers testified, and I believe that he was at Jackson, that Jackson did have a few white students, and at Residence Park in 1957 it was basically white.

I'm not sure whether those are his exact words, but that's the substance of it.

Q. Jackson was a black school and Residence Park was a white school, and Defendants' Exhibit CP indicates no child

from that optional area of the Veterans Administration Center in attendance at Jackson, is that correct?

A. That's correct.

Q. What about the attendance of children at the white Residence Park Elementary School? Did you examine Defendants' Exhibit CO?

A. I did, yes, and those figures were for the same years at Residence Park, and the attendance of VA children given in that resume from 1957 to 1972 was a total of 48 children, 8 of whom were black, five the race of whom were unknown, and 35 were white.

Most of these actually were in the late 1950's.

Q. What was the effect of that optional zone at that time, the Veterans Administration Hospital?

A. Well, it allowed the white students in that optional zone to attend white schools. I believe that was Residence Park.

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[R. I. 1455, Vol. 14] Q. Dr. Foster, I believe in earlier testimony you referred to the manipulation of zone lines.

Did you make any study of this type of practice in the Dayton School System?

A. Yes, I did.

Q. Perhaps since I believe in going into that we would get into optional attendance zones, would you first of all, and I'm backtracking, tell me what exhibits you used and what maps you examined and indicate some of the optional areas which you identified between schools of opposite race?

A. In the optional zone criterion, I examined the various overlays and base census maps. I believe in terms of exhibits the one that is currently on is the elementary '57 overlay, which would be PX-47A, and the ones following that in terms of dates at both the elementary and high school and middle school level, and the different base maps, starting with the PX-46A, I believe, having to do with the ten-year census data.

I also examined other exhibits having to do with Board decisions in creating optional zones.

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[R. I. 1457-1458, Vol. 14] Q. You do have that data as to those other five, is that correct?

A. Yes.

Q. All right. Would you list them, giving us the name of the school and the racial composition?

A. All right. The first group that I established was created in 1953 by the Board.

One was Willard and Irving. This was in the Board minutes, Plaintiffs' Exhibit 123. Willard at that time was 100 percent black. Irving in 1951 was 46.6 percent black.

The second one was Jackson and Westwood established in 1953. Westwood was 0 percent black and Jackson, in 1951, was 35.9 percent black.

The third one was Whittier and Willard. Willard was a hundred percent black and Whittier, in 1951, was 29.9 percent black.

A fourth option was Whittier and Miami Chapel. Miami Chapel was 100 percent black in 1951. Whittier was 29.9 percent.

A fifth one was Wogaman and Highview. Wogaman was one of the all-black schools, and Highview, which was opened in 1951, I believe –

Q. Excuse me. Going back to Miami Chapel: Can you check that year with the year that it was opened?

A. Well, the '51 may apply to Whittier and not to Miami Chapel. It may have been opened a year or so later. I think it may have been opened in '53.

That's correct. Miami Chapel was opened in 1953 at 100 percent black.

Highview was opened in 1951 at 1.7 percent black.

The sixth in this group –

Q. Highview was with Wogaman, is that correct?

A. That's correct.

Q. And Wogaman was 100 percent black?

A. That's correct.

Q. All right. The sixth in the group was Edison and Jefferson optional zone, which was not listed in the Board minutes

in PX-123, but it does appear on the elementary '57 map.

In 1951 Edison was 43 percent black and Jefferson was 0 percent black.

Q. Excuse me, Dr. Foster. Are you dividing these by years?

A. Well, sort of by the groups as I described them earlier. The three high schools, the six elementary schools that were developed in '53, and then the balance.

Q. All right. Fine.

A. The three high schools were Roosevelt and Colonel White.

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[R. I. 1459-1461, Vol. 14] Well, this is sort of a complicated one. Around 1951 part of the present optional zone between Colonel White and Roosevelt was established, and I think in 1957 the balance of the present optional zone was established.

Q. In 1951 what portion of the optional zone as it appears on the present map was created?

A. This would be the part closest to the Wolf River, the southern part.

No. That would be the northern part. I beg your pardon.

Q. It's Wolf Creek, I believe.

A. Wolf Creek.

Q. Wolf River, I believe, is in Memphis, is that right?

A. That's correct.

Q. Thank you.

A. I misspoke. This would be the northern part, since the optional zone was carved out of the original Roosevelt zone, so the first one, part of the option that was established in '51 was the northern section.

Q. And at that time Colonel White was what kind of school?

A. I understand it was ninth and tenth grades, and the juniors and seniors went to Fairview.

Q. Is that referred to in the Board minutes as Fairview-White option as well? Have you seen such reference?

A. I can't say for sure, but I believe so. It was Fairview-Colonel White in the early part.

Q. So as I understand it, a student in the ninth and tenth grades in the northern part of this optional attendance zone could, instead of going to the zone which this was carved out of, Roosevelt, go to Colonel White for the first two years, and thereafter all the way north to Fairview High School, is that correct?

A. That's my understanding, yes.

Q. For his last two years.

All right. Can you go on with the Roosevelt-Colonel White analysis in terms of what the racial composition was at particular times?

A. Well, in 1951 Roosevelt was 31.5 percent black, and the Colonel White-Fairview combination was 0 percent black.

Following the additional segment of the optional zone, and I believe it was 57 or close to it, Roosevelt in 1963, which was the next year that we have data, was 94.5 percent black, and Colonel White, which had then been established as a four-year high school, was 1.1 percent black.

Q. Did you say black or white? I'm sorry.

A. 1.1 percent black. I'm not sure which I said, but that's what I meant.

[R. I. 1461, Vol. 14] Q. In examining the other data and the depositions which you have listed, did you determine any of the other operative facts with respect to the way in which this optional attendance area worked?

A. Yes. We do have hard data in Plaintiffs' Exhibit 15-A, I believe it is, giving the number of optional area students attending Colonel White by years. In 1959 there were two blacks and 186 whites. In 1960, two blacks, 284 whites. In 1961, two blacks and 304 whites. In 1963, six blacks and 360 whites.

And our next date shows quite a change in the direction. In 1968 there were 216 blacks out of the option attending Colonel White, 191 whites. 1969, 245 blacks, 109 whites. In 1970, 298 blacks and 75 whites.

Q. What had happened to the total racial composition of Roosevelt at this time?

A. Roosevelt had become an all-black school and Colonel White partially so.

Do you want those figures?

Q. Do you have the figures for Colonel White, 1968-'69?

A. Not on this sheet, but I have it.

1968-'69, Colonel White was 19.3 percent black.

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[R. I. 1466-1471, Vol. 14] Q. I believe referring to the exhibit, Doctor Foster, in 1951 there were black students in Roosevelt at that time; is that correct?

A. 31.5 percent black I believe I read a few minutes ago.

Q. All right. What other optional attendance areas have you examined at the high school level?

A. At the high school level, Roth and Fairview which according to my notes and, I believe, in the Board minutes which would be PX-123, if I am not mistaken, Roth and Fairview which is pictured by the red hatchmarks on the west central part of the large map, it is a rather small zone and my understanding is in terms of racial composition in 1967 which was two years after the beginning of the option, Fairview was 8.1 percent black. Roth was 85.7 percent black. Currently in 1972, Fairview is 24.1 percent black. Roth is 5.8 percent black.

Q. Is it your understanding, Doctor, that this involved very few students?

A. It is my understanding it still involves some but the number is very small, something under five students there.

Q. All right. Have you examined the Colonel White-Kiser option?

A. Yes, I did. This was established in 1962 and is still operative and is illustrated on the map by the red hatchmarks between the two zones and just to the south of the McGuffey zone on the large map. In 1967 — well, let me say that I do have data about the number of children in this optional zone attending Colonel White and Kiser by race beginning in 1962 and going through to 1971.

Q. What is the source of that information, Doctor?

A. This is Plaintiffs' Exhibit 15B and 15B-1, I believe.

Q. All right.

A. The total figures for '62 through '65 were according to my notes 58 white pupils opted to go to Colonel White and 26 whites to Kiser, and I also threw Patterson into that since it is a city-wide school and is part of the racial picture.

THE COURT: Excuse me. Doesn't the choice exist irrespective of this area, this optional area?

MR. LUCAS: Yes, Your Honor, but 15.1 does indicate some of the students from that area went to Patterson in some subsequent years.

THE COURT: I am curious, though, about the relevance of that. Might that not distort this situation? In other words, the option to go to Patterson is city-wide, as I understand it. It has nothing to do with residents in this optional area or am I incorrect, Mr. Lucas?

MR. LUCAS: Your Honor, I would agree with the Court that it is not limited to this optional area but it may, in fact, have something to do with the option.

THE COURT: I am afraid a figure as to Patterson which is a fragmentary figure — well, I will receive it, of course. I would prefer if this would testify specifically as he has as to the number of students who have exercised their option irrespective of Patterson. I would prefer that that not be included in the total. If you will keep it separate, Doctor —

MR. LUCAS: I don't think we are going to total them. I think we will keep them separate and just indicate the movement from that particular area to other schools in a section.

THE COURT: All right.

THE WITNESS: The exhibit gives between 1967 and 1971 opting to Colonel White were 27 whites. Opting to Kiser were 102 whites.

THE COURT: Excuse me, Doctor. May I have those again?

THE WITNESS: 27 white students to Colonel White and 102 white students to Kiser.

THE COURT: I must ask you once more. My pens here are not working near as well as they ought to. What was the figure?

THE WITNESS: 27 white students to Colonel White.

THE COURT: Thank you.

THE WITNESS: And 102 white students to Kiser and 15 whites to Patterson. Then, in the year '71-72, no white students to Colonel White, 20 white students to Kiser and four whites to Patterson.

BY MR. LUCAS:

Q. Dr. Foster, you say opted to one school or the other. Is it your understanding that the particular optional area was carved from one of the particular school districts and, if so, which one?

A. I believe it was carved from Colonel White.

Q. During the same period of time, do you have the racial composition of Colonel White and Kiser from 1968 and 1972?

A. In 1968 Colonel White was 8.4 percent black according to my figures and Kiser was 9/10 percent black. In 1972, Colonel White had changed to 54.6 percent black. Kiser was at 9.8 percent black.

Q. All right. Were there other elementary school zones which were optional in nature that you can identify?

A. Yes. The one between Residence Park and Jackson which we have discussed earlier, and then there were five others. In 1954, an optional zone was established between Residence Park and Addams. Shortly before that in 1951,

the data indicates that Residence Park was zero percent black and Addams was 29.3 percent. That's Jane Addams.

Q. Do you have the figures for 1963, Dr. Foster?

A. Between Residence Park and Addams.

Q. Yes.

A. Addams in 1963 was 41.6 percent black and Residence Park which would be elementary was 80 percent black.

Q. All right.

A. The second one established in 1957 was Westwood and Gardendale. Gardendale was 7.9 percent black and Westwood was 94.7 percent black, and the option was still in existence in 1963. In 1960, another option was established between Addams and Residence Park which in a sense was the reverse from the previous option. Again, the figures for 1963 indicate that Adams was 41.6 percent black and Residence Park was 80 percent black so that the racial situation had reversed. At that time, another option established in 1962 was – I beg your pardon – in 1965 was Emerson and Irving. Emerson was 0 percent black. Irving was 100 percent black, and the final option I have listed is Belle Haven and Ft. McKinley which was established in 1972. Belle Haven had 17.7 per black and Ft. McKinley 2.6 percent black.

Q. Dr. Foster, examining these optional attendance areas – as a preliminary matter, let me ask you as an administrator whether or not the use of optional attendance areas is in your opinion sound?

[R. I. 1472-1473, Vol. 14] A. You mean from a general school administration standpoint?

Q. That is correct.

A. In my opinion, it is an important administrative device.

Q. Why is that?

A. Whether it is racially connected or not racially connected. Well, essentially I suppose like anything else in administration, what you are establishing is a rule, and then you start making exceptions to that rule and you make one exception for one group and another group wants an exception, and before long you are in an administrative nightmare.

If I can cite one example quickly of this in Dade County which is the sixth largest system in the country, when we worked with them on their HEW compliance about three years ago, the present superintendent asked us to recommend immediately that all optional zones be erased and they had something like well over 150 of them which I believe the previous superintendent had established. I cite this as an example that there were some racial zones, but essentially it was this administrative's feeling that it would just be gotten rid of and it would be a much better situation for the School Administration generally.

Q. In what way do optional attendance areas affect desegregation and the stability of pupil assignment to particular schools?

A. Well, essentially in my opinion they create instability in the public in one way in terms of housing choices where there are choices and in terms of perception of whether a school is going black or staying white, this sort of thing, so that generally where you have an optional zone which has racial implications, you have an unstable situation that everybody realizes is in a changing environment. So, what it usually does is simply accelerate whatever process is going on or work toward the acceleration of the changing situation.

Q. The optional attendance zones which you have identified in your testimony today, what is your opinion with respect to the effect or if there is any effect on racial composition of schools in Dayton?

A. Well, in my opinion, these accelerated and precipitated further segregation, and in those cases where I was able to cite hard figures, I think that is very definitely borne out, and I have no reason to believe that in all the other cases the same thing was true although I can't cite actual pupil figures from year to year because they simply aren't available.

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[R. I. 1479, Vol. 15] Q. Dr. Foster, with reference, first of all, to the option attendance zones, you described certain effects.

Are there short term as well as long term effects of the utilization of optional attendance zones?

A. Yes. In the ones we talked about at the high school level, if we can cite the Roosevelt-Colonel White optional zone, and the following Colonel White-Kiser optional zone, the short term effect it seems to me is to allow whites to move out of a school assignment that is becoming black, and I should point out that this is not to say that in many cases that at a certain point blacks also take advantage of this option.

In the Colonel White-Kiser situation, for example, as Colonel White has become blacker, we are at the point where there are no whites apparently opting now to go to Colonel White.

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[R. I. 1481-1483, Vol. 15] Q. Turning now, Dr. Foster, to the criterion manipulation of zone lines which you described, will you first of all tell me how you go about examining and what you would include within the definition of changing or manipulating zone lines? For example, would you include, say, new construction, for instance, as a zone line?

A. We would because generally unless there is a clear substitution of an existing school by a new school, new construction, for example, on the same site or virtually on the same site, you do have changing boundaries in the attendance zone when you set up new construction so that is very definitely a new factor. Essentially, the way you examine this is to take whatever data is available in terms of maps or descriptions of zone boundary lines and simply decide over a period of time how they have changed if at all and to what purpose they have been changed.

I did find, I think, in my examination of this in Dayton that attendance zone lines have remained relatively stable over the past 20 years and especially in comparison to many other systems that I have observed.

Q. All right. In light of the stability of the pattern – well, perhaps before we get to that because I will want to come back to that later – did you examine in particular the West Dayton area in light of this concept?

A. I did.

Q. And in examining the area and in terms of understanding what happened there, did you have to deal with some of the other criteria you have already discussed such as optional attendance and so forth?

A. Very definitely all the criteria because in almost every instance, the criteria worked together rather than working in isolation.

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THE COURT: Before you do, let me ask a question: Anytime a school system builds a new school, this by definition requires a change of attendance lines, does it not?

THE WITNESS: Not always. If you have, as I tried to explain and didn't do a very good job, if you have a building, a new building replacing an old building, sometimes they will maintain the old building while they are completing the new construction, and as soon as they get the new one finished, then the kids simply move over into the new construction. The old building is either razed or used for other purposes.

THE COURT: Absent that, Doctor, assuming a situation where you build a new school that is not a replacement, as population shifts geographically you build a new school. That must include a change of a boundary line.

THE WITNESS: Correct.

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[R. I. 1485-1505, Vol. 15] Up on the small board is the census map of 1950, Plaintiffs' Exhibit 26B, and the elementary overlay of 1957, which is 47A, is that correct?

A. Yes, sir.

Q. All right, sir. Can you tell us what your analysis was in the Dayton area of the changes in boundaries?

A. Plaintiffs' Exhibit 75 points out that at this time, I believe in the winter of 1962, in December — no, 1952, in December, the Board went about making some decisions about redistricting and building and so forth in the west side schools. Some of these decisions had obviously already been made.

There were apparently two alternatives which were termed Plan A and Plan B, and the Board opted to go at this time with Plan B.

In describing this situation, I would like to not only talk about zone lines and changing zone lines, but also school additions and the other factors I have been discussing in concert with the zone line situation, and I think I can be very brief about doing this, but doing it in such a way that the interrelationship and the connection will be made, because it is very difficult to consider any one of these factors in isolation from the other factors.

It is very much more of a gestalt type of arrangement.

So in Plan B, the decision was made to decrease the Wogaman attendance areas.

Q. You are talking about the 1953 and this 1957 map is a result of Plan B, is that right?

A. Yes. This map shows Wogaman at this stage, and it was much larger, of course, in 1953, or '52, prior to the change.

Wogaman was decreased, and the Jackson zone, which is immediately to the north of Wogaman, was added to, and the Weaver zone, which is to the north and east of Wogaman was added to.

At the same time Willard, which was one of the schools in consideration, and I might say that Willard and Garfield and Wogaman at that time were all black schools, but Willard was kept the same; Garfield, which is just to the north of Willard in a fairly compact residential area, obviously because of its small size, was decreased and additions were made to Edison to the direct north of Garfield, and to Irving, which is to the southeast and can be seen on this map with quite a bit of green in this area.

Now, in discussing this move, the racial proposition of the schools which were added to according to the 1951 data, which was just two years prior to the move actually, Jackson, which took this part of Wogaman, was at 35.9 percent black in 1951, Edison was 43 percent black. For the schools that took part of Garfield — I beg your pardon.

I need to go back to where I ended with Jackson which took in part of Wogaman.

Weaver took in the other part of Wogaman. Weaver was at 67.6 percent black in 1951.

Q. Let me stop you at that point.

Wogaman was all black, so that any area taken in would have been black, is that correct?

A. That's correct.

Q. And the Jackson percentage was at that time what?

A. 35.9 percent black.

Q. And Weaver was sixty —

A. — 7.6.

Q. All right. So that was the 51 enrollment, is that correct?

A. That's correct.

Q. So they added from the black enrollment at Wogaman initially black students?

A. Yes. And the result obviously would be to increase the black percentages in those two schools, since the territory being transferred was all presumably black pupils.

The two schools that took from Garfield were Edison, which in 1951 was 43 percent black, and Irving was 46.6 percent black.

Garfield, of course, was also an all-black school.

Q. Would this have any effect, Doctor, of adding blacks to those other schools?

A. Presumably, since all the territory taken in was black residential area.

Q. All right. Doctor, in terms of the system as a whole, how did these schools to which black students were added compare with other schools in the system in terms of their black-white enrollment?

A. In looking at the 1951 data which we have, outside of the all-black schools we are concerned with, Wogaman, Willard and Garfield, the four schools of Jackson, Edison — Edison here, Weaver and Irving were the four highest percentage elementary black schools in the system.

Now, at the same time it is important to note that in 1953 we did discuss this in our openings, that Miami Chapel, which had been formed out of the Wogaman district or zone, opened as a 100 percent black school with pupils in 1953, which would be the same time these changes were made.

In terms of teaching staff which is one of the criteria involved in this analysis, according to the data in PX-3, Plaintiffs' Exhibit, by 1957 three or more black teachers had been assigned to Edison, to Jackson, to Weaver, to Miami Chapel, to Highview, to Whittier, and to Irving, and, of course, the three all-black schools of Garfield, Wogaman, Willard had all-black staffs.

Q. Miami Chapel, did it have more than three black teachers?

A. I believe Miami Chapel opened up in 1953 with somethink like, if my memory serves me, 85 percent black teachers.

I don't know how many were on the faculty. So that in terms of teaching faculty, in terms of race, it is clear that the faculty assignment indicated that the schools involved in this total configuration were either all-black schools or going to be black, predominantly black schools.

Q. Now, Dr. Foster, were there any black teachers assigned to the other schools in the system at that time?

A. I believe that those are the only schools, the ones I read, which had as many as three black teachers at that time, which was 1957. I'm not even sure whether the data indicated whether there were any less than three teachers. But at that time that was a rather significant number of black teachers to to be assigned to any school.

Now, if you look at another criterion which we have been discussing, that of building additions, and in looking at this total area, the west side area, we note that in 1954 and 1958

there were additions made to Irving which had received part of the Garfield territory.

In 1954 and '58 there were additions made to Edison which received the other part of the Garfield territory, and in 1954 and 1955 there were additions made to Weaver, which received part of the Wogaman territory. Another factor that is involved in this total gestalt would be optional zones.

In discussing optional zones, we will remember that I mentioned six elementary schools which the Board in 1953 had created optional zones.

All of those are in this complex. According to Plaintiffs' Exhibit 123, which is Board minutes, an optional zone was created between Whittier and Miami Chapel directly to the west of Whittier designated by the cross-hatch, and apparently from the map a territory, the zone was taken out of the Miami Chapel area which was formerly, of course, Wogaman.

Q. Now, the area within the zone, does it coincide with the color coding on the map?

A. The area in the optional zone between Miami Chapel and Whittier corresponds completely — it is in the shape of a triangle in the southeast corner of Miami Chapel. It corresponds with the green census data which is 5 to 25 percent black in 1950.

Q. Does the western boundary, the optional area, take out all of that green area from the Miami Chapel zone?

A. It does coincide as I see the map, with the line separating the green part of Miami Chapel zone and the red part to the northwest.

Q. Miami Chapel is 100 percent black. What was Whittier at that time?

A. Well, not at that time but in 1951 Whittier was 29.9 percent black.

Q. And what color appears in the Whittier zone?

A. Whittier has a little orange to the northwest. It has quite a bit of green to the west and to the north and about two-thirds of it is white, but this might be a bit deceptive

because it appears from the map that quite a bit of that is not populated.

Q. What was the effect of the optional zone at that time for Miami Chapel and Whittier?

A. The effect would be to allow the blacks – pardon me – the whites in the southeast corner of Miami Chapel to attend Whittier which was essentially a white school at that time.

The second optional zone created – I beg your pardon.

Q. I think you have answered the question. Go on to the next option.

A. It was between Willard which is here on the map and Whittier which we have just been discussing, Whittier to the southeast of Willard. Willard in 1951, as we know, was 100 percent black, and as we have just said, Whittier was 29.9 percent black, and again this optional zone allowed the whites in Willard to attend Whittier.

Q. And the color in the Willard area at that point was what, orange?

A. Almost completely orange on the census in 1950 which indicates 50 to 85 percent black.

Q. There is another optional area apparently just above that. Can you describe that?

A. The optional area just north and a little east of that is between Willard and Irving. We said Willard was a 100 percent black school in 1951. Irving was 46.6 percent black. This allowed the white students in the northeast section where the zone is at Willard to attend Irving School.

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Q. Dr. Foster, just to clear this up for Mr. Greer, I believe you started your testimony indicating there had been a change in policy simultaneous with the adoption of many of these optional areas; is that correct?

A. I don't know whether I did, but there was a change, I believe, in the year 1952 by the Board which said there would be no more transfers.

Q. Now, your testimony goes that the orange area indicates

the presence from the census of some whites in that area, does it not?

A. That's my assumption, yes. I think the part that is confusing is that the data for school population while it may give 100 percent black doesn't mean as we know in many cases that the children living in the area are all black because under the previous transfer rules, those children may have transferred out.

Another optional zone created in 1953 was the Jackson-Westwood zone which is to the north of Jackson and to the south of Westwood.

In 1951, Jackson was 35.9 percent black. Westwood was all white.

Q. Now, you said that Jackson had black students from Wogaman added to it as a result of the action in 1953; is that correct?

A. That's correct.

Q. And this option was created, I believe you said, by the Board in the winter of 1952?

A. I believe in December, yes.

Q. Do you know whether or not it was implemented in December or the following September? Do you know that?

A. I am not absolutely certain, but I am reasonably certain it was begun in September of the following year.

Q. All right. What was the effect in terms of boundary changes, if any, of the creation of that option between Jackson and Westwood?

A. Well, essentially it had the effect of shrinking the northern boundary of the Jackson elementary zone because the students according to the census map residing in the optional zone would probably have been white students since the area is designated by white which according to the map is zero to five percent black in the census.

Q. Dr. Foster, as I understand the optional attendance area as it works, the southern boundary of the optional attendance area is now the mandatory boundary of Jackson

and people below there are automatically assigned to Jackson; is that right?

A. Yes, because all of the optional zone would be part of the Jackson attendance area.

Q. North of that they could go either to Jackson or Westwood; is that correct?

A. Since that is part of the zone, I assume so, yes.

Another optional zone that was created in 1953 was Wogaman, between Wogaman and Highview, and it is not clear on this map and I am not certain, but I assume it might be a one-street zone since I believe the maps do not indicate one-street optional zones. In any event, the zone is to the south of Wogaman and to the north of Highview. It would be indicated by the fact that there is a very minute –

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THE WITNESS: – very minute space between the two colors of blue, blue on the side and red on the north.

BY MR. LUCAS:

Q. When was Highview opened?

A. Highview was opened, I believe, in 1951 as a 1.7 percent black school.

Q. Now, the boundary, the northern boundary of Highview and the southern boundary of Wogaman, are they related with the exception of the one street optional area you have indicated to any color coding on the map?

A. Yes. The boundary goes along on the western part where, in fact, the housing is. It goes along and divides on the north. The all-black section of Wogaman is marked in red which is 85 to 100 percent black on the census map, and to the south of the line is the blue of Highview which is 25 to 50 percent black according to the census data.

There is one final optional zone created at that time which brings the total to six. I don't believe this was included in PX-123, the exhibit of the Board's minutes, but it is on this map of elementary 1957, and I would assume that it was created either in 1953 or shortly thereafter, and that is the

optional zone between Edison and to the north and northwest Jefferson Elementary Schools. This would be the optional zone which is covering completely the green color on the base census map, green being 20 to 25 percent black.

In 1951, we know Edison was 100 percent – I beg your pardon – we know Edison was 43 percent black and Jefferson was all white. The results of this as in the other cases would permit these white students in the optional zone to option for Jefferson rather than to go to the blacker school at Edison. This would as in the situation to the west of Jackson and Westwood have the effect of shrinking the northern boundary of Edison in this case.

Q. Dr. Foster, did you locate any particular alternatives that could have been done with respect to the Wogaman School?

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A. I did note a couple of alternatives. As examples, to the south we did have Highview at that time which as we noted was opened in 1951 at 1.7 percent black. And, of course, the point I am making there is the territory from Wogaman could have been added to Highview since it was in certainly a walking distance and very little difference between the two schools. Another possibility might have been to use Grace A. Greene as a receiving school from Garfield. Grace Greene is actually – maybe a little closer to the Garfield building. It is about the same distance as Edison, and they are all within walking distance of each of the three schools. Grace Greene in 1951, I believe, was 6.5 percent black. This is merely illustrative of the fact that by making another choice the Board could have moved the black students to a much wider option at the time than they chose to do.

Q. Dr. Foster, just looking at the area as you have done in terms of the construction additions and new school construction of Miami Chapel and redrawing of attendance boundaries and creation of optional zones, what was the effect of the implementation of Plan B in West Dayton?

A. Well, I think the effect was clearly one of locking in and freezing this configuration including these schools into an all-black school situation.

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A. I did list three cases where schools were opened involving changing zones and one we have discussed in 1951, the Highview School, was opened just to the south of Wogaman with Wogaman 100 percent black and Highview opening at 1.7 percent black, and I believe that previously I stated that this zone line might have been changed to move more black students into Highview.

THE COURT: Excuse me.

Dr. Foster, I am concerned about the horns of the dilemma that a school board now finds itself on, because a previous witness testified that when you start moving black students into a white school, you merely accelerate the turning of that school into white.

Now, you have just suggested that an alternative would have been to move them into the Highview School. No matter what the school board would have done, is it not true that it would have had the effect of accelerating the movement of blacks into a school?

THE WITNESS: Well, let me say that I agree with some of what you are saying. The problem, as I see it in this type of situation, is essentially one of diddling around piecemeal with desegregation instead of attacking the problem wholesale and making clear that you are desegregating the entire system.

THE COURT: Would that involve transportation then?

THE WITNESS: In a situation today it certainly would, yes.

THE COURT: Is it fair to say, Dr. Foster, that from your analysis and your testimony that the only viable alternative to this would be a system of transportation of children, that anything else is mere a makeshift? I don't want to put the words in your mouth.

THE WITNESS: Right.

THE COURT: But I'm getting the feeling that there is only really one alternative in your opinion.

THE WITNESS: No. I think there is a second alternative. I guess that is redundant. There is an alternative. Rather than do it the way in which the Dayton Board did in addressing itself to this very real problem in west side, of a changing community, which certainly has housing overtones and all the rest, if the Board does take a stance as I suggested they could have in a couple of situations in this change, where there were white schools directly adjacent, the message clearly is to the community that the Board is doing everything it can, even though over the long run the results may wind up segregated, but at least it is doing everything in its power to maintain a desegregated situation.

I think the result of this is to produce more stability in real estate movements, in the general public's attitudes of, well, the whole area is going black, so you know, that's the way it is.

THE COURT: Doctor, there has been testimony here of a tipping point that has been used.

Do I understand that what you are now suggesting is that as long as the Board doesn't exceed the tipping point, it would be satisfactory to adjust zone lines as an alternative to transportation?

THE WITNESS: Well, I'm not sure what your question is.

THE COURT: All right. It's possible that I'm using a term that I assumed was a general one in this field.

THE WITNESS: Well, it is. I don't agree with the concept because as far as I know there is only one piece of research that I have seen on this. There may be others. But Johns Hopkins did a research of tipping point some years ago in relation to desegregation on the assumption that there was a point at which there was a big movement of blacks, and the results of the research indicated this wasn't so; that if a certain area of

a city is going to go black, then it simply goes black over a period of time.

THE COURT: Irrespective of the school board does?

THE WITNESS: No. It is simply a question of the school board contributing to the pattern and accelerating it and exacerbating the whole movement.

THE COURT: Well, any change such as you are now discussing that would have the effect of making a white school of a larger percentage of blacks becomes then a matter of degree, because witnesses have testified that there is a community perception and that after a student body passes a certain point it is perceived as a black school.

Now, if that is true, then the school board is faced with the problems of so adjusting the percentages as not to send black students to a white school, so as to make that perceived as a black school.

THE WITNESS: Well, to start with, I do think this is a controversial issue, and it is not the tipping point arrangement as a very popular concept with school people. I think they all would like to believe and do believe honestly in their own minds that a school — not only the community moves at a certain tipping point, but that the school itself is inferior once it gets a certain percentage minority group members, which I think is ridiculous.

But be that as it may, I recognize that a board in making decisions in these cases may be fighting a losing battle, and as I stated, I think the only secure solution and the only safe solution is to disestablish a dual structure in the entire system so that whites in fleeing or changing however you want to term it, meet the same situation wherever they go.

THE COURT: In other words, Doctor, do I understand you to say that the only real alternative, other than a constant adjusting and watching of percentages and so fourth, is transportation?

THE WITNESS: I think that would be involved in the final analysis, yes.

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[R. I. 1515-1516, Vol. 15] Q. Dr. Foster, we go now to your third example. If we can at this point, let's discuss the Roth and Roosevelt situation.

A. I believe we covered Highview and Gardendale. The Roth High School opened in 1959 which we can see on the large map to the west of the city.

Q. Do you want to step to the smaller map here, Dr. Foster. We have put up some new overlays. We still have 46C, the 1960 census, and 48D, the 1960 high school attendance boundaries.

A. That's correct. On this map Roth is located almost at the extreme west central portion of the Dayton System, and the boundaries are designated as I am pointing to the immediate east of the established 1959 opening zone for the Roth High School, we have Roosevelt High School adjoining Roth on the east. In terms of setting up these zones, the indications are that the Roth opening essentially took the whites, white students out of Roosevelt. The base census map indicates that the largest portion of Roth is in blue, almost all to the south and southeast and to the north is blue representing 25 to 50 percent black. All the other portion surrounding the school site itself is white indicating zero to 5 percent black, and on the 1960 census data, there is a small section to the east of the zone and to the southeast of the building which is in orange representing 50 to 75 percent black whereas at that time Roosevelt in 1959 or in the 1960 census was almost entirely red indicating 85 to 100 percent black. We know from Plaintiffs' Exhibit 1 on admissions that Roth opened with 662 pupils and that the same year Roosevelt decreased by 602 pupils from the previous year. We know that in 1963 our data indicates that Roth was 53.5 percent black whereas Roosevelt was still close to all black being 94.5 percent black. We also know or assume from Mr. Kirk's deposition that there were some considerations given by the Board to race in the establishment of the Roth zone and in the erection of the building itself.

Q. Dr. Foster, if you will follow with me my pencil, the boundary of the original Roosevelt High School zone included this optional area between Colonel White and Roosevelt and went all the way to the now boundary of the northern boundary of the Roth School; is that correct?

A. Yes.

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[R. I. 1518-1520, Vol. 15] Q. We have now placed up high school attendance boundaries 1965, Plaintiffs' Exhibit 49B. Dr. Foster, looking first of all at the large map since it may be more readily visible, what is the location of the old Dunbar School as it was established with the relationship to the Roosevelt School?

A. I believe it would be fairly close to the Roosevelt School and to the east.

Q. That is the present MacFarlane School building?

A. Yes, slightly to the south but mostly to the east.

Q. All right. What is your understanding about the operation of the old Dunbar High School?

A. My understanding is that it does have to do with attendance zones. It was a city-wide zone and it was all black in its student assignment and all black in its faculty assignment except for maybe one or two persons in a special teaching field, and I think it was driver training, and the old Dunbar High School, as I say, drew from the entire city extensively. It was an open enrollment school. I do believe that at one point there were certain grades assigned to it from one of the elementary schools close by. It was either Weaver or Willard. I believe in 1942 Willard and Garfield 7th grades were actually assigned to Dunbar rather than given a choice of attending it. Theoretically, at least, anybody could opt to attend or choose to attend the old Dunbar High School but in practicalities, only blacks chose to do so. I think it had a strong effect on the development of Roosevelt since it was very close to Roosevelt and the testimony in other evidence suggested there was some interplay between the two schools in terms

of blacks going to one or the other as Roosevelt became increasingly black in 1947 and was 15.3 percent black. In 1951, it was 31.5 percent black and in 1963, the year after Dunbar became MacFarlane, Roosevelt was 94.5 percent black.

Q. Dr. Foster, the earlier demographic map is now covered up, but there were white people south and to the west of the Roosevelt zone who walked past or walked longer distances to Roosevelt than they would have had to walk to Dunbar; is that correct?

A. Well, this is correct. They could have opted to go to Dunbar, but as I stated, I believe no whites did so.

Q. Well, when Dunbar was opened, was there any action taken identifying that school as a black school or white school aside from those you have already mentioned?

A. You mean other than making it a city-wide school and assigning black faculty?

Q. Well, I didn't realize you mentioned black faculty.

A. Yes, I had. I know of no other official action.

Q. What is the effect, and if you can reference it to your experience, of establishment of such a school in proximity to Roosevelt with the all black faculty?

A. Well, it was clear that the old Dunbar was an all black school. This allowed blacks to opt out of Roosevelt and go to MacFarlane — I mean to Dunbar, and essentially in my opinion accentuated at that time the whiteness of Roosevelt and the blackness of Dunbar.

Q. Do you know the date the old Dunbar School was built?

A. I have it, yes. If I am not mistaken, it would have been 1931. This was as of the date of original construction for MacFarlane.

Q. Assuming it opened during the thirties, are you aware, Dr. Foster, that it was the policy of the Dayton Board of Education to refuse to permit black teachers to teach white children in the system at that time?

A. Yes, I am aware of that.

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[R. I. 1522-1526, Vol. 15] Q. Dr. Foster, the record reflects that it was the policy of the Dayton Board of Education to refuse to permit white children to be taught by black teachers. What effect in terms of possible white attendance at Dunbar, does the combination of that policy, with the assignment of an all-black faculty which you have already testified to, to that school when it opened, have?

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A. I think potentially it is obvious, as I said before, that a white child could opt or choose to go to Dunbar, but for all practical purposes, white children didn't do this, and the fact that black faculty were assigned in toto to Dunbar would certainly indicate, I don't know whether legally or not, in terms of Board regulations, that white children couldn't go there, but on the face of it they wouldn't.

THE COURT: Dr. Foster, in your research and preparation for your appearance, have you found anywhere any evidence that white children were refused admission to Dunbar?

THE WITNESS: I don't believe so. I can refer to one thing from an exhibit.

THE COURT: If you would, please.

THE WITNESS: I believe it is Plaintiff's Exhibit 28, which is a memo by Superintendent French. I think this essentially answers your question. He says, "Dunbar has no boundary. Theoretically any child can elect Dunbar, but practically only Negro children attend."

THE COURT: You may proceed,

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Q. Dr. Foster, referring now to the criterion which you discussed, transfer of policy: Did you examine transfer policies in the Dayton School System?

A. Yes, I did.

Q. Now, you have already testified, I believe, with respect

to the statement in the minutes, as to the elimination or reduction of transfers at the time of the option of the optional attendance zones.

What did your examination of these policies indicate from that point?

A. There were some records in the testimony which I won't discuss involving this. There was one exhibit which is PX-16, which it states that in 1969 whites were given emergency transfers from Roosevelt to Stivers, and further than that, my examination led only to review of the transfer policy, or the freedom of enrollment policy, which was adopted in 1969, and as I understand it, has been continued through the present contained in Plaintiffs' Exhibit 16, which sets up a priority for transfers, and further examination of Plaintiffs' 16-D and 16-F gives some hard figures about the results of this policy since its inception.

Q. And what effect has this policy had on segregation that exists in the Dayton School System?

A. From my understanding of the data, I would say that the hardship and emergency clause in the transfer policy is pretty racially mutual. That is to say, that in 1972, according to Plaintiffs' Exhibit 16-F, 260 blacks —

THE COURT: Doctor, may I ask that you not quote from the exhibit. If you have referred to it, I assure you I will check it.

I'm intentionally interested in your conclusions. I'm not interested in the figures. They are available.

THE WITNESS: All right. My conclusions are that the hardship policy led to primarily whites moving to white schools and blacks to black schools.

My conclusion concerning Exhibit 16-D, which had to do with Dayton for the four years of the total transfers, indicate that in no cases, for all practical purposes, did whites transfer to white schools, and there was some movement of blacks to white schools.

BY MR. LUCAS:

Q. In terms of its effectiveness in eliminating patterns of segregation, do you have an opinion as to the effectiveness of the present policy?

A. I would classify it as minimal.

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[R. I. 1533-1540, Vol. 15] Q. Now, Dr. Foster, assume, if you will, though there is some difference in the testimony, that the policy of the Dayton Board of Education with respect to faculties, which I believe was one of your criteria, has been at least until 1951 of never assigning a black teacher to teach a white child, and then the pattern which you yourself noted through 1957 of the assignment of some black teachers to schools with large numbers of black children, and then the continuation of a pattern of relationship between a number of percent of black pupils and a number of percent of black teachers in schools until the current school year.

Do you have those facts at this point?

A. I think.

Q. All right. And then assume that there is a substantial reassignment of a faculty in the system. Again, there is some disagreement at this point as to whether or not there is still a relationship to density of black pupil population and the numbers of percent of black faculty.

But assuming that has been, let's call it, for the sake of this hypothetical, a perfect racial balance of faculty.

In light of that history, could you give us your opinion as to the effect, first of all, of that policy before the change, in terms of identification of schools as black or white and the effects of that change on the present situation in the Dayton School System?

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A. Well, my opinion is that this policy and practice before the change we assume took place, especially since it is in a northern district, would indicate that the Board is missing or

has missed a golden opportunity to prove that it does want to run a unitary system and remove segregation practices insofar as it is able, because the Board clearly, as I understand it, under most State laws, or all State laws, can assign teachers willy-nilly in the System wherever they want to. This is not a free choice matter.

Q. Is it also an annual option that the School Board has?

A. Yes, in terms of assignment. In terms of my opinion on what this does, as recently changed, assuming this, I would have to say that this does not remove by any means the vestages of a segregated system since it is only one component of several important aspects of a system segregated or desegregated. I think it is a very important component, and I think it is a step certainly in the direction of desegregation, and a very positive step.

But coupled with the other most important step of pupil assignment, so long as the schools themselves remain segregated, as they certainly do at this time in my opinion in Dayton, then the fact that teachers or staff being desegregated, if we assume that doesn't carry near the weight it would if the total desegregation process had taken place.

Now, if I can go a step further in my own opinion on that briefly: If in fact all these components were taken care of and we had a truly desegregated system, I would hazard that even then it is going to take a year or two for the identification of schools as black or white to be removed, but we haven't been doing that long enough to really know how long it does take. But I think that in some systems that have done this completely two or three or four years ago, they are very definitely and quickly no longer thinking of schools as black or white but as just schools.

Q. Dr. Foster, did you observe when examining the construction pattern and the additions to schools a pattern of assignment in that regard of faculty?

A. Yes.

Q. What was that pattern?

A. The pattern was largely one of assigning faculty by race according to the race of the school.

THE COURT: Mr. Lucas, could we now drop that issue? I think we have abundant testimony the School Board did assign black teachers to black schools and white teachers to white schools. Let me say I am aware of that. May I ask that we now abandon that for evidentiary purposes.

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Q. Dr. Foster, you used the term pattern. Is an important element the assignment of a particular percentage of black or white faculty to a particular school or is it something that can be considered in the context of a single school?

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A. I think I have already stated that these things have to be considered in the total configuration, and that assignment of teachers to any one school in the system is no indication of the pattern.

BY MR. LUCAS:

Q. Dr. Foster, I think we have covered your criteria.

A. As a matter of fact, we have not.

Q. I was looking for my list of criteria.

THE COURT: I do trust, Dr. Foster, that these are now different criteria that we have not covered.

THE WITNESS: Yes, and I think there is one left.

THE COURT: I would be most interested in hearing from the witness.

THE WITNESS: And some of these really fit in more than one example. They are overlapping so that it is simply a matter of judgment as to assigning them to one classification, but in the problem of great organization, I chose to put the establishment of the middle schools in 1971, and simply point out that these five middle schools which were established marked again a fine opportunity for the school system to illustrate that they were all for desegregated systems because one of the —

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THE WITNESS: All right. My conclusion is that the establishment of the middle schools in 1971 resulted in the establishment of four out of five schools that were clearly racially identifiable, therefore, increasing or maintaining segregation as opposed to availing the opportunity of decreasing it.

Q. Which were the four of five that you considered racially identifiable?

A. Cornell Heights, MacFarlane, Whittier, and Orville Wright.

Q. Now, Dr. Foster, in your review of these criteria and as you have testified, they are inter-related and somewhat interdependent. Do you have some general conclusions from your examination of these criteria?

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A. Well, in the interest of brevity, I think I could summarize each one of them with a sentence or two, but I will forego that arrangement and simply say that taken individually or in isolation, any of these criteria or different components of any of these criteria might suggest otherwise, but basically I think the examples and illustrations I have given and not summarized illustrate that the results of the Board in the last 20 years, mainly the period in which we have been reviewing in Dayton, the results have been to either increase segregation or maintain it when taking all of these things in a total pattern or configuration. In some cases, I think it was very clearly indicated, and I hesitate to use the word purposeful, but I think a better word that would describe my feeling about Board action in these matters is predictable, and I realize in saying that that hindsight is always better than foresight and much easier, but I think from going over the data and analyzing it, it is pretty clear in many cases the Board was aware of what was likely to happen, and I think the results as I have attempted to analyze them and display them have indicated what did happen.

Q. Dr. Foster, without going into any great detail, the

pattern of school construction, wasn't particularly one which you took into account in coming to your general conclusion?

A. Very definitely, particularly the decisions involved in the west side arrangements in 1953 and the building additions.

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[R. I. 1548, Vol. 16] A. Yes, I found in checking against this there were in building additions – I had stated there were 62 school additions to the present. Actually, there were 33 for a total of 95 additions since 1950. Eighteen of these 33 additional ones were made to schools which at that time were 90 percent or more black or white. This means out of the total of 95 additions, there were 78 additions made to schools 90 percent or more black or white. Seven of these additional 33 building additions were not made to this type of school.

Q. That's seven more than the 18 of 33?

A. That's correct, making a grand total of 9 which were not made to schools 90 percent or more black or white when they were added, and then 8 of these 33 additional I found I couldn't decide what their racial composition was at opening because of incomplete data. So, I classified those as uncertain. Those included additions to Drexel in '54 and '56 and additions to Greene in '57 and additions to Highview in '54, two additions to Irving, one in '54 and one in '58, and an addition to Jackson Elementary in '53, and an addition to Westwood in '60, and I think there has been a good deal of testimony and some exhibits about those schools as changing schools.

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[R. I. 1554, Vol. 16] Q. In terms of desegregation, Doctor Foster, in your experience with the field, does the dividing line between black and white communities take on importance in the discussion of the neighborhood school?

A. Well, it takes on importance for everything, not just a discussion of the neighborhood school, but the whole facet of desegregation.

Q. That would be a definable ethnic different neighborhood, would it not?

A. Yes.

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[R. I. 1556-1563, Vol. 16]. Q. Well, there would be the possibile exception of Webster, wouldn't there, which is a long, odd-shaped attendance zone?

Maybe I better point it out to you.

We have kind of got the name hidden by the Scotch tape here, but looking at the big map, Webster is an odd-shaped and elongated zone, isn't it?

A. Yes.

Q. But, of course –

A. But part of that is the golf course to the north, or whatever the flag represents.

Q. Right. As you can see from the map, the north end of it, which was annexed to the city, is largely undeveloped, and the Kitty Hawk Municipal Golf Course?

A. Correct.

Q. But in large part, with that exception, the various elementary school zones in the Dayton system are all compact geographical areas where students wouldn't have to walk more than a mile and a half or two miles to get to school, isn't that true?

A. I would say generally so, yes. Certainly nothing like the example I cited in Dade County of forty miles.

Q. No. There is no forty-mile neighborhood school in the Dayton system, is there?

A. On the other hand, I think what I tried to point out, the common perception of a neighborhood school is that a school is situated in a geographical center of an attendance area with all the boundaries equi-distanct as though it were in the center of a circle or center of a square, and very often, as I said, this just isn't true.

Q. Now, the next element that you just gave us in your definition of the perception of the neighborhood school concept

was a situation of the students being assigned to the nearest school, isn't that right?

A. That's correct.

Q. And that is true of the Dayton situation, is it not?

A. Not completely, no, sir.

Q. You are thinking of the Shawan Acres and the Veterans Administration system?

A. No. I think you misunderstood my point on that. All I am saying is that if the school is in fact located somewhere near the border of its particular attendance zone, then there will be children in the adjacent or contiguous attendance zone which will be closer to it probably than a school, a so-called neighborhood school to which they are assigned.

Q. Well, let's keep it to the elementary schools in the Dayton system.

All of them are, with, again, the possible exception of Webster, which is this funny-shaped zone, are all roughly in the center part of their attendance zones, are they not?

A. I think there would probably be some exceptions.

Q. Well, are there any exceptions?

A. If you would like me to go to the map, I think I could find some.

Q. Well, do you know of any without going to the map?

A. Well, I can see a little better. I haven't listed any, if that's what you mean, no, sir.

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A. Well, I can do it from here, if you want.

For example, in Shoup Mill, which is a little to the north central of the Shoup Mill attendance area, there are, according to my perception of the map and the streets and so forth from where I sit, people in the south part of Shiloh attendance area who are closer to Shoup Mill than they would be to Shiloh.

This is the sort of thing to which I am referring.

By Mr. Greer:

Q. Okay. And in your acquaintanceship with the City of Dayton, are you familiar with any of the traffic patterns or problems of accesses to any of these schools?

A. Some of them, yes.

Q. All right. Let's move into what you define as the third element of the common perception to neighborhood schools, and that would be that they are by and large walk-in schools so that a student doesn't have to avail himself of transportation to get there, isn't that right?

A. That's correct.

Q. And again that aspect of the definition would apply in large part to the Dayton system, wouldn't it?

A. I am not sure I understand your last question.

Q. The location of the schools in the Dayton System is such that they are largely walk-in schools for the students attending them; isn't that true?

A. I think at the elementary level that is generally true, yes, sir.

THE COURT: Dr. Foster, may I ask a question:

If there is no thought of having neighborhood schools or anything similar to it, why would you have more elementary schools than high schools?

THE WITNESS: Well, one answer to that, I think, Your Honor, would be a problem of attrition.

THE COURT: That much attrition?

THE WITNESS: And size of schools, generally.

THE COURT: The attrition can't be that great. It couldn't begin until at least the third year of high school, perhaps the middle of the second year.

THE WITNESS: You have two factors. One is attrition, and especially in cities you have a fairly large attrition rate starting at the 9th and 10th grade, very heavy in some cities in the 10th grade, when they come of age, but also the factor of what is considered to be an optimal size for the different grade classification schools, and there is a pretty consistent belief now by building people that in order to have a good high school, you have to have it a considerable size, say 2,000 to 3,000 pupils whereas elementary schools, the optimal size roughly would be 800 students. So in order to make up that

difference, you would have to have considering no attrition three elementary schools to cover one high school.

THE COURT: You are suggesting that no consideration at all would be given to the convenience of an elementary school in terms of this?

THE WITNESS: Oh, no, I am not suggesting that, because I think it is.

THE COURT: Then, isn't that an aspect of neighborhood school? Now, it may be that neighborhood is a bad term. It may have sociological problems, but isn't it true that school boards generally think of an elementary school as being closer than a high school geographically to a student's residence?

THE WITNESS: Yes, I would say so.

THE COURT: You may proceed, Mr. Greer.

Q. To continue with the walk-in aspect of your definition, I think we have covered the elementary schools as being essentially in the Dayton System walk-in elementary schools; is that correct?

A. I believe so, yes.

Q. When you get to the high school level, of course there are fewer schools and therefore, larger attendance areas; isn't that true?

A. That's correct.

Q. But by and large, the high schools in the Dayton System are also walk-in schools with the possible exception of Stivers and Patterson Co-op; isn't that so?

A. I would believe so although I can't remember the exact figures for '71-72 for example, and I haven't seen them for '72-73.

Q. And of course, Patterson Co-op is a school that has city-wide attendance because it is a vocational school?

A. That's correct.

Q. And while Stivers' boundaries since 1969 have involved a larger distance in that they have gone across the river and taken in Irving and Whittier Elementary areas, those areas are accessible from Stivers since Stivers is located right on

Fifth Street and Fifth Street is one of the streets that crosses the river and has a public transportation line; isn't that so?

A. I think so, yes.

Q. Now, I didn't really understand what I jotted down as the fourth aspect of your definition of the common perception of neighborhood schools, and that was that they represented a sociological neighborhood. What is a sociological neighborhood?

A. Well, I think the common perception is that schools still in fact, represent the classic description of what we would call a neighborhood, a group of people of like interests and who all go to not the same church but neighborhood churches together and go to a neighborhood shopping center, and who have neighborhood recreation and so forth.

Q. If we take what is possibly a very naive definition of a neighborhood to be simply people living in the same geographical area, that definition of a neighborhood would apply to any of the schools, wouldn't it?

A. Pretty much, and I think that has already been talked about in the testimony, yes.

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[R. I. 1590-1591, Vol. 16] Q. The one thing that the maps clearly show us in the Dayton situation is that there has been very little change in the attendance zones over the past 20 years, isn't that right?

A. I believe I agreed with that, yes, sir.

Q. All of the school attendance boundary lines have remained relatively stable for the past 20 years?

A. That's correct.

Q. And I think you have also indicated that that is especially true when you compare the Dayton situation to many other systems, such as Detroit, where you have made observations?

A. I think I made that reference, yes.

Q. And that is true, isn't it?

A. I would say so as a generalization, yes, sir.

Q. Another thing that just a glance at the map makes very clear in this case is that the optional attendance zones are all located approximately equidistant from the two schools that are affected by them, isn't that right?

A. You are saying equidistant from the site population of each of the options that can be selected to the total optional zone?

Q. That's right. In other words, they are in the middle area between the two schools that are involved?

A. Well, they have to be in the middle area between the two schools, but that is one thing; to say that and something else, that they are equidistant from the two sites.

Q. Now, I'm lost.

A. Well, I understand your original question to say do I agree that the optional zones in Dayton are equidistant to the schools which they serve, and by that I understood you to mean the school building sites and not the total attendance areas. If you are talking about the attendance areas, I would agree, yes, sir.

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[R. I. 1592-1593, Vol. 16) Q. To get back to attendance boundaries, Dr. Foster, there is one instance, is there not, where the Dayton School Board did manipulate a boundary all the way through the downtown area and across the Great Miami River into a relatively distanct part of town? I am referring there to the change in the Stivers boundary in 1969.

A. Yes. It is still contiguous to the Stivers zone, though.

Q. That's right. It doesn't jump over any other intermediate zones, does it?

A. No.

Q. But it does go from Stivers which is on East Fifth Street all the way through downtown Dayton and across the river and into the Irving and Whittier elementary zones on the other side of the river?

A. That's correct.

Q. But the effect of that boundary change was to bring more black students into what had been a predominantly white high school, wasn't it?

A. I believe it would, yes, if the students that were in the zones in fact wound up at Stivers, and I know no reason why they wouldn't.

Q. Have you made any independent check as to that boundary change?

A. I am aware of it, yes.

Q. That occurred in 1969, did it not?

A. I don't have the date, but the indication from my figures is that Stivers has increased in 1970 from 10.8 percent black to 12.3 percent black in 1971 and 14.0 in 1972.

Q. Now, in your testimony last Wednesday, you discussed with us three cases where schools were open involving changing zones: The Highview situation, the Gardendale situation, and the Roth situation.

A. Yes.

Q. Let's start with Roth. That high school opened in 1959 with a 25 percent black student population, didn't it?

A. Pardon me just a second. It opened in 1959 with what, sir.

Q. A 25 percent black student population.

A. I don't have that figure in my notes about what its opening percentage was.

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[R. I. 1597-1599, Vol. 16] Q. The school board in 1959 when it built Roth could also have tried to structure the Roth attendance zone in such a manner as to exclude black areas from Roth, could it not?

A. Presumably, yes.

Q. And instead when it drew the attendance zone for Roth, it included a large part of areas that are shown on the 1960 map as having a population density of 25 to 49.9 percent black and some area that is shown on the census map as being 50 to 84.9 percent black; isn't that right?

A. As represented by the blue and orange; right?
Q. That's right.
A. That is correct.

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Q. So that regardless of the effect that the setting up of the attendance boundaries may have had on Roosevelt, the setting up of those attendance boundaries at least assured that Roth High School when it opened would be a school with a mixed black and white population; isn't that true?

A. Well, I think I testified that according to the way I saw the map, Roth took all the area out of Roosevelt that had whites in it, and I think what you just said is true that it would be a mixed population.

Q. Can you go up to the board and suggest any kind of a boundary for Roth High School in 1958 that wouldn't have taken the white areas that are shown on the census map? It would be a wild looking bounadry, wouldn't it?

A. Not any wilder than many I have seen. You would simply have to run a dog leg to the went out of Roosevelt.

Q. So, kind of throw a dog leg over into the west boundary of the school system?

A. Into the blue and white area, yes. I think this is considered perfectly legitimate in school districting.

Q. Although there aren't any dog legs in the Dayton system, are there, with the possible exception of Stivers boundary change?

A. Well, I think the Stivers one is fairly compact, but because of the size of high school attendance areas necessarily, you do tend to get some peculiar configurations.

Q. Despite the apparent structuring of the Roth attendance zone to make it an integrated high school, movement of residential population after 1959 have turned Roth like Roosevelt into a predominantly black school; isn't that correct?

A. Well, I would agree with the second part of your statement but not the first part.

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[R. I. 1602-1615, Vol. 16] Q. By the same token, I suppose if we are looking back in history, it would be possible for us five or ten years from now to say that it is predictable that the location of Fairview High School made it inevitable that that school ultimately would become all black; is that right?

A. Well, Fairview High School was located sometime ago.

Q. But five years after Roth was located, there was still a mix of approximately 50 percent and 50 percent in the school, wasn't there?

A. Yes, but Fairview was constructed I believe, in 1930 which is quite a different situation than construction of Roth in 1959.

Q. Now, another school which you mentioned as involving changed zones when it was opened was the Gardendale School which was opened in 1957; is that right?

A. That's correct.

Q. In 1963 which is the first year for which we have information concerning that school, it was 7.8 percent black?

A. Correct.

Q. Now you testified, as I recall, that by looking at the maps, and let's point out the Gardendale School that we are talking about. You testified that from looking at the maps that by changing its attendance zone it could have been opened with more black students.

A. Right.

Q. If that had happened, wouldn't you be here today saying exactly what you have just said about the Roth situation, that that made it predictable that Gardendale would turn all black?

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A. You are asking if upon opening Gardendale had been desegregated to a greater extent?

Q. Let's say 25 percent to make it comparable to the Roth situation.

A. That this would have assured today it would be all black; is that what you are asking?

Q. That then the Board of Education would have been

doing something improper there because it would be predictable that if you opened up 25 percent black it is going to turn all black.

A. Well, I don't think I was tying my prediction to precisely the amount at which it opened, but in the Gardendale case, it is now in 1972, 78.9 percent black but as I see the opening of Gardendale in 1957, this again in the same token, I think, as I tried to explain Roth, Gardendale is sort of a holding position for a school that is less black than the surrounding schools. I am not sure apparently that you get my point.

THE COURT: I didn't, Dr. Foster. I don't think you responded to Mr. Greer's question, because this ties in with what I referred to in your last day of testimony as the horns of a dilemma.

If I understand your testimony in general correctly, there is nothing that a school board can do that isn't going to have a segregative effect unless it is to transport children?

THE WITNESS: Well, I don't believe that was quite my testimony. I think that ultimately you have to face the problem of transportation in a city such as Dayton, and to stabilize whatever effect school patterns have on residential movement, and I think they certainly have considerable. The two are tied in very closely together to stabilize this, and then ultimately you do have to involve transportation, and I think this choice was open to the Board at all these times that we are talking about.

THE COURT: Dr. Foster, if the school board opens a school that is totally white, it is perceived as a white school. If it opens a school that is partially white and partially black, and then as time goes on becomes more black, then they have opened a school that is in a holding pattern. So there really is no solution from your testimony as to what a school board can do. No matter what it is, there will be a position to take that it is a segregative situation, and this disturbs me.

THE WITNESS: Well, what I have tried to explain, and I have apparently been unsuccessful at it, is that I think that

the Dayton Board, as the black population grew from the center city and expanded, has in fact set up a sort of retreating situation where whites could have optional zones and earlier transfers and be in not white schools but in whiter schools than they would be if they went to the school to which they were originally assigned, and I think this is a fairly traditional pattern of Board action.

By Mr. Greer:

Q. Now, Dr. Foster, if what you said were true, wouldn't you expect to find many changes in boundaries as the population moved? And you don't find that in Dayton, do you?

A. Well, I think I explained that Dayton did not use that technique, but rather used the techniques of optional zoned and school building additions, which had the same effect, in my opinion, as changing boundaries. It is just a different way at getting at the same result.

THE COURT: Excuse me one moment, Mr. Greer.

Supposing instead of building Roth they had added to Roosevelt. That would have locked in the student population at Roosevelt, wouldn't it?

THE WITNESS: You mean the black student population surrounding Roosevelt?

THE COURT: Yes. They would be locked in, wouldn't they?

THE WITNESS: Yes. It would have created more capacity, yes.

THE COURT: That's a segregative technique, is it not?

THE WITNESS: In many cases it is, yes.

THE COURT: You may proceed, Mr. Greer.

Q. At any rate, Gardendale did have some percentage of black students in earlier years, didn't they?

A. That's correct.

Q. But not a large enough percentage that in your opinion it would become inevitable that Gardendale would become predominantly black as it apparently has?

A. I'm not sure of your question, but I'll say yes.

Q. All right. As I understood your testimony the other

day, your complaint about the Gardendale, if I could term it a complaint, and I probably shouldn't, was that it could have been opened with more black students in it?

A. That's correct.

Q. Now, you are, of course, aware, are you not, of the development of the Townview area in Dayton in the 1950's and the proposed annexation of this area to the city?

A. As a matter of fact, I am not, in any great detail.

Q. Are you aware of it in any detail?

A. Not enough to discuss it intelligently, no, sir.

Q. The Townview area was this area over here adjacent to where the Gardendale School was located, isn't that right?

A. If you say so, yes, sir.

Q. Well, if you accept everything I say as right, Dr. Foster, there is no need in having you here.

Now, do you know anything about it?

A. I said that I didn't know enough to discuss the situation.

Q. All right. And you don't have any idea of what the potential student population, at least in the minds of the school board and the administration, in this Gardendale area was when it was located, do you?

A. Could I stop just a second and look up something?

Q. Sure.

A. No, I don't. I would make the comment that I was curious about Gardendale in this connection because I don't think it has ever reached its full enrollment potential, and I wondered exactly why that was.

Q. The annexation of the Townview area has never taken place in fact, has it?

A. (Witness shaking head negatively.)

Q. You are aware, of course, that when Gardendale was built, it was built at least in large part to house the program for the mentally retarded for which the school board was responsible at that time?

A. I am aware of that, yes, sir.

Q. And the mentally retarded program continued in that location until shortly before 1970, didn't it?

A. I'm not sure of the exact date, but I believe that's close, yes, sir.

Q. Now, if we look at the Gardendale attendance zone, Gardendale School is located right on the west side of Gettysburg Avenue, isn't it?

A. I believe so.

THE COURT: Mr. Greer, I would like some more information about which you have just asked.

If Gardendale was used for mentally retarded, then almost by definition it wasn't an attendance zone school, was it?

MR. GREER: Not in that respect. Part of its classrooms were for the attendance zone here, but it also housed the mentally retarded program.

THE COURT: Do I understand that the figures that have been given, though, are for the total school or for just that portion that was the ordinary school?

MR. GREER: I believe they are for the total school.

Is that correct?

THE COURT: Mr. Lucas, can you help the Court on this?

MR. LUCAS: It is my understanding that one wing of the Gardendale School was leased for the mentally retarded children and that the figures that we have deal with the regular school.

THE COURT: Only.

MR. LUCAS: Only, yes, sir.

THE COURT: Thank you.

MR. GREER: Mr. Kirk has just corrected me on that, and that is true.

THE COURT: Thank you. You may proceed.

Q. If we look at the Gardendale attendance zone, we find that Gettysburg Avenue runs right down the middle of it, does it not?

A. Yes.

Q. And then Gettysburg Avenue also forms the east boundary of Residence Park to the south and of Carlson to the south of that, doesn't it?

A. Yes.

Q. Back in the time when Gardendale School was erected, Gettysburg Avenue was even then a heavily traveled thoroughfare, wasn't it?

A. I believe that's correct, yes, sir.

Q. There were no traffiic lights on Gettysburg near the Gardendale School, were there?

A. I have no idea sir.

Q. And as far as the residential portion that is toward the Westwood School District and was optional at that time, that was an area which had a good many problems of access to Gardendale, wasn't it?

A. I wouldn't know.

Q. Have you ever been in that residential area?

A. Yes, but not in 1957, when it opened.

Q. All right, there are still many cul-de-sacs in the area, are there not?

A. I believe that's correct, yes, sir.

Q. And to get over to Gettysburg Avenue, you have to walk through a lot of lots that are business and industry, don't you?

A. Currently, you mean?

Q. If that's all you know about, I guess that's all you can tell me about.

A. I would say that was true in the sixties, the early sixties, and the middle sixties.

Q. There were many areas —

A. And as far as I know, it is still true, yes.

Q. There were many areas that didn't even have sidewalks, isn't that true?

A. Quite possible.

Q. Do you know when traffic lights for safety and when sidewalks were put in on Gettysburg Avenue near the Gardendale School?

A. No, I don't, but I know there were pretty few traffic lights along Gettysburg in the early sixties, but specifically as to Gardendale, I couldn't respond.

Q. Now, part of the Westwood School District that was down in this cul-de-sac residential area was made optional to Gardendale when Gardendale was opened, wasn't it?

A. I have that as one of my optional zones in 1957.

Q. All right. And to make our conversation with each other a little easier for each of us and for the Court to follow, what I have put up here on the board is a base of Plaintiffs' Exhibit 46-D, which is the 1970 census map, and overlays of the elementary, 1957 zones, and optional zones, which is Plaintiffs' Exhibit 47-A, and the elementary 1970 zones and optional zones which is Plaintiffs' Exhibit 50.

Referring to that, why, we can look through the elementary seventy area into the 1957 lines and see the optional zone that we are referring to between Gardendale and Westwood, can we not?

A. I see it, y s.

Q. And that was a zone that was approximately equidistant between the two school locations, wasn't it?

A. I would judge so, yes, sir.

Q. If at any time you would find it easier to come up and look at the small map, why, Dr. Foster, feel free to do so.

A. Thank you. It appears to be from here, yes, sir.

Q. All right. Now, it had formerly been part of the Westwood zone, hadn't it?

A. I believe so, yes.

Q. And the problem of access from that area to the Gardendale area was the problem of Gettysburg and the cul-de-sac and the industries that we have just discussed, wasn't it, at that time?

A. I have no direct way of knowing that, but I assume that could have been a problem.

Q. All right. Then I think it was in 1970 that the optional area was removed and the boundary of Gardendale was extended to take in the optional area plus some more of the Westwood area, isn't that right?

A. It appears to be from the two maps, yes, sir.

Q. And are you aware that despite the 12 years of develop-

ment of this area with lights and sidewalks and more residences, that when the optional area was removed and the boundary extended there, it was still necessary to bus students from that area in order to get them up to Gardendale school?

A. No, I was not aware of that.

Q. Were you aware that the extension of the Gardendale attendance zone followed the transfer of the mentally retarded that had formerly been housed at Gardendale?

A. I assume from the date that it would have, yes, sir.

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[R. I. 1627-1643, Vol. 16] Q. Then, let's go to the optional zones where you spent a good deal of time on your testimony last Wednesday. You would agree with me, would you not, that even if you don't approve of optional zones as good administrative practice that they are an extremely widespread administrative device in school systems and that they often exist for the most innocent and legitimate of reasons?

A. Well, no, I don't think I would agree with that completely. I think they are becoming much less widespread than they were because in many cases they were used for segregation reasons. I think they are used for legitimate reasons, but I I think again administratively except on a very temporary basis they are bad news.

Q. All right, but let's go back to the fifties and sixties. They were very widespread, then, were they not?

A. In Dayton are you saying?

Q. No, throughout the country.

A. Most of the systems I have examined at that time — not most, but quite a few of them had them, yes, the big city systems especially.

Q. And a good many of them grew up with the idea that if there is no great administrative problem created, there is no reason not to let people go to one of two schools if it is equally close to go to either school; isn't that right?

A. That's a little complicated.

Q. Let me try to break it down. I live on Block A and I have got a school that is three blocks one way from me and another school that is three blocks the other way from me. So, as far as I am concerned, it is just as easy to go to one school as the other, and the reason optional zones grew up in educational systems at least in part is from the feeling that if it creates no great administrative problem to the school system, why not let Greer go to School A or School B.

A. I wouldn't agree with that.

Q. You wouldn't? In understanding optional zones, you would agree, would you not, that you have to consider many of the same safety and access factors that are involved in setting fixed attendance zones?

A. Well, I won't argue with Dayton's rationale for creating optional zones, but I think I stated this is the first case I know of access being used as a basis for the creation of optional zones. That's a new one on me, and I don't really see that there is, you know, a need to create an optional zone in this case. Why not assign the children one way or another and draw your line and then change the boundaries later when the proposed changes in the area come off. I think that would remove the possibility of your being questioned or being suspect in the creation of an optional zone especially if it has racial possibilities.

Q. Nobody was questioning optional zones back in the fifties when these were set up, were they, Dr. Foster?

A. Well, I don't know as a matter of fact.

Q. And the optional zones that appear in the Dayton School System are scattered to the east and to the north as well as in the west side of Dayton, aren't they?

A. I believe they are all over the system, yes.

Q. Now, in an optional area the option runs to all students who are living in that area regardless of their race, doesn't it?

A. It is supposed to, yes.

Q. And last Wednesday you didn't give us any testimony concerning the optional zones, for example, between Wilbur

Wright and Stivers and Stivers and Belmont that have existed in the Dayton School System. Do you find any significance in those options?

A. I didn't mean for the 15 I cited to be exclusive, but I characterized those, I believe, as one that have a good deal of variance in terms of composition between the two schools forming the option.

Q. Can you check your figures for us and tell us what the variance of racial composition was between Belmont and Wilbur Wright?

A. At what time, sir?

Q. At any time.

A. In 1972, this year, my figures give 5.2 percent black for Belmont and 9.2 percent black for Wilbur Wright.

Q. Take us back a few years, then, if you will.

A. In 1967, Wilbur Wright had 3.2 percent black and Belmont .1 percent black.

Q. And, if you will, go back another couple of years.

A. In 1963, for Belmont it was all white and Wilbur Wright was 3.3 percent black.

Q. So, throughout the period that you have referred to, there hasn't been any great variance between the student composition of Wilbur Wright and Belmont, has there?

A. Racially, I would say no, that is right.

Q. Do you know anything about why the optional zone between Belmont and Wilbur Wright was created?

A. I don't believe I reviewed that, no, sir.

Q. All right. Stay in the east end of Dayton for a minute. There is a green area that spans the Cleveland and some of the Horace Mann elementary districts, is there not?

A. Yes.

Q. And what does that indicate as far as racial composition is concerned?

A. Something like five to 25 percent, I believe, black.

Q. And right adjacent to that green area on the map there is an optional attendance zone, is there not?

A. There is one to the west. Is that the one you are referring to?

Q. Yes, there is a large one to the west and a smaller one which I guess just barely touches that over to the east.

A. That is correct.

Q. Have you made any studies of those optional zones and their effect?

A. I don't believe those were on my list, no, sir.

Q. Did you prepare the list or was it prepared for you?

A. I went through the board minutes that I had records of and picked out the ones that I thought had racial significance as I think I stated earlier.

Q. All right.

A. The only other ones that were not included in Plaintiffs' Exhibit 123 giving the dates in the board minutes were picked up by me on the maps. For example, elementary 57 has some which were not in the board minutes and I checked those out for racial differences.

Q. Do you find just from looking at the map any significance to the green area next to the optional area in east Dayton?

A. If I am not mistaken, that's the state hospital area.

Q. So, in fact, there aren't any black residents in that green area, are there, to your knowledge?

A. I wouldn't assume so except for the population of the hospital which I assume would not be on there.

Q. And the optional zone turns out to be a cemetery, doesn't it?

A. I believe if my memory serves me right, that is correct.

Q. What about these other elementary optional zones? There are four of them that now exist in east Dayton, aren't there?

A. Counting the two we just discussed, that is correct.

Q. And then there is one that now exists in north Dayton; isn't that right?

A. If you are referring to the Belle Haven-Fort McKinley zone, that is correct.

Q. And now there are only three elementary optional zones that exist in west Dayton, isn't that right? The Jackson-Westwood option and the two between Residence Park and Jane Addams?

A. I believe that is correct.

Q. In fact, the establishment of the middle schools in 1971 is the factor that contributed to the cleaning out of most of these optional zones, isn't it?

A. I am not certain, but it is obvious they have decreased.

THE COURT: Mr. Greer, may the Court accept that there are only eight elementary school optional zones at this time?

MR. GREER: I think that is correct, is it not, Mr. Curk?

MR. CURK: I believe that is correct.

THE COURT: Thank you.

Q. And by the same token, there are four high school optional zones, are there not?

A. I believe that is accurate.

Q. There were a couple other high school option zones on the east end involving Stivers, Wilbur Wright and Belmont that were cleaned out when the Stivers boundary changes were effected in 1969, isn't that so?

A. I believe so.

Q. Now, you have identified and discussed three high school optional areas. The first one that you mentioned was a small area that was created between Roth and Fairview in 1965; isn't that right?

A. That's what I have on my notes, yes, sir.

Q. And according to all the information that is available, there were no students that went to any schools in that optional area between 1965 and 1971; isn't that so?

A. Well, I think I testified that I understood it was a very small number and something less than five students, I don't have the date for that.

Q. If I could refer you to Defendants' Exhibit CL.

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Q. Am I not correct that according to this information there have been a total of three students attending either of these schools from this optional area and that all three of those students have been in the last two years?

A. That is correct, I believe.

Q. And that there were no students attending either high school from the optional area between 1965 and 1971?

A. According to the exhibit, that is correct, yes.

Q. Now, let's then move to the Colonel White-Kiser optional area. I think you told us on direct examination that in the four school years from 1967 through 1971, 102 white students from that area went to Kiser and 27 white students from that area went to Colonel White.

A. Those are the figures I had, yes, sir.

Q. And in the preceding five school years, from '62 to '67, there were 26 white students going to Kiser and 58 white students going to Colonel White?

A. That would seem logical, but my notes give '62 to '65, and I'm not sure what it is.

Q. You are missing a couple of years there?

A. Apparently. I may have made simply a mismark.

Q. All right. This optional area was created in 1962, was it not?

A. I believe so, yes.

Q. And all of the students in the area appear to have been white students, were they not?

A. I believe so.

Q. Colonel White appears to have been the school of choice of these students if we look at the figures as to who went where, at least up until the last four years?

A. I believe so, right.

Q. Then you gave us on your direct examination the student composition figures between Kiser and Colonel White for '67 to '72.

As of 1962, when this optional zone was created, both schools were predominantly white schools, weren't they?

A. Yes, that is correct.

Q. What were the percentages?

A. I have figures for 1963.

Q. That would be the year after the option was created?

A. Yes. Colonel White is 1.1 percent black, and Kiser is 2.7 percent black.

THE COURT: 2.7?

THE WITNESS: Yes.

Q. Then if we would jump five years after the creation of this option, up to the school year of '67-68, what would the student composition of the two schools involve?

A. My notes say that Colonel White was 8.4 percent black and Kiser 0.9 percent black.

Q. All right. Let's then move between the two options we've just discussed to the Colonel White-Roosevelt option.

As I understand it from your testimony, part of that option was created in 1951, and the rest of it came in 1957 or 1958?

A. Those are the dates I have, yes, sir.

Q. Both of those dates are, of course, a number of years before the creation of the Colonel White-Kiser option, isn't that right?

A. That would be correct.

Q. Am I correct also that in 1951-52 Roosevelt High School was only 31.5 percent black in student composition?

A. Those are my figures, yes.

Q. Now, if we look at this optional area on the map, you would agree with me, would you not, that the area north of Wolfe Creek has better access to Colonel White High School than to Roosevelt?

A. I understand from depositions and testimony that this really didn't make much difference in terms of mobility from students in that area, that they managed over the years to get back and forth with considerable ease, or at least they have managed.

I don't know what problems they got into, but at least there was a considerable flow across Wolf Creek. I would agree that simply looking at the map would indicate that is not any closer to Colonel White, but because of Wolfe Creek, and I guess the Tire and Rubber Company that is in the area, presumably it would be easier physically somehow to get to Colonel White.

Q. All right. Wolfe Creek, of course, runs along the southern boundary of the ultimate optional area, doesn't it?

A. That's correct.

Q. And the side branch of the Baltimore and Ohio Railroad cuts through West Dayton and then comes across Wolfe Creek and goes out to the west along the southern bank there, doesn't it?

A. I believe it does, yes.

Q. I'm sorry. Along the northern bank.

And also in that area, along the Wolf Creek is the Dayton Tire & Rubber Company, which has grown and expanded with the passage of years during the period we are discussing?

A. I believe that's correct.

Q. Now, originally this optional area was part of the Roosevelt attendance zone, was it not?

A. I believe so.

Q. And at that time Colonel White was only a two-year school which fed into Fairview High School, which was a considerably greater distance from the optional area than Roosevelt High School?

A. That's correct.

Q. Now, in 1951 the first part of this optional area was created, isn't that correct?

A. That is my understanding, yes.

Q. And that part of the option was the northern part, which is bounded on the east by Salem Avenue, down to Superior, and then over across Superior to Rosedale, and then down to Wolfe Creek, wasn't it?

A. I believe that's accurate, yes.

Q. Do you know why it came down to Wolfe Creek on the west?

A. I don't recall reading anything about the reason.

Q. Well, are you aware of the fact that the Super Packing Company's Stockyards were located on the south side of Wolfe Creek at the western end of this optional area?

A. I don't believe I ever have seen reference to that, no, sir.

Q. Have you made any attempt to investigate why these optional areas in the Dayton System were created aside from looking at the maps and the exhibits?

A. Considerable, yes.

Q. All right. Then you are, of course, aware that as far as the northeast part of this optional area created in 1951, the City Transit Company had public transportation on Salem Avenue which would get them up to Fairview High School, aren't you?

A. That seems reasonable, yes.

Q. And you are also aware that on the west side, which is where the optional area went down to Wolf Creek, by 1951 the City Transit Company had a gasoline bus that went up Philadelphia Avenue and could get the students to Fairview after they completed Colonel White?

A. I don't believe I saw reference to that, but it is certainly feasible.

O. All right. And those are the kinds of things that you would take into consideration on this optional area, aren't they?

A. You mean in establishing it?

Q. Yes.

A. Could be, yes.

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[R. I. 1642-1643, Vol. 16] Q. And then the change that came in the optional area came about at a time that Colonel White changed to a four-year high school, so that it was no longer necessary for the students to matriculate from Colonel White up to Fairview?

A. That's correct.

Q. And the only change that was effective at that time was to carry the rest of the option down to the natural boundary of Wolfe Creek, and the change really only involved a couple of city squares, didn't it?

A. In terms of actual residential area, you mean?

Q. Yes.

A. I believe that is reasonably accurate, yes.

Q. All right. Now, at the time these few squares were added to the optional area so that all of the students in that area could go either to Colonel White or to Roosevelt High School, the population of the optional area was predominantly white, although there were some blacks living there, isn't that true?

A. I believe that's correct, yes.

Q. The optional area itself hasn't changed at all, has it, insofar as its boundaries are concerned, in the fifteen years that have passed since 1957?

A. I don't believe so, no.

Q. The population of the optional area, however, has become predominantly black, isn't that true?

A. I would judge so, yes.

Q. And if the school board had wanted to use this optional area as a device for keeping blacks out of Colonel White High School, it could easily have transferred the entire area back to Roosevelt with hard boundaries once the population changed, couldn't it?

A. Well, I think under the freedom of enrollment business they would have been able to go in anyway if there had been capacity in Colonel White.

Q. Freedom of enrollment didn't come in until 1969, did it?

A. That's right.

Q. The effect of this optional area has been to bring more black students to Colonel White High School, has it not?

A. Only in the past three or four years has that had any effect.

Q. Since 1968?

A. That's my understanding, yes, sir, my figures.

I don't have figures between '63 and '68.

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[R. I. 1645-1659, Vol. 16] Q. All right. And the first years for which we have figures after 1951 is '63-'64 with respect to these two schools, isn't it?

A. I believe so, yes.

Q. What were the student compositions of Jackson and Residence Park in 1963 and 1964?

A. Residence Park was 80 percent black in '63, and Jackson was 98.5 percent black.

Q. Thus these thirty some students from the VA over this period of years, or at least those who were there in '63 and '64, were attending a predominantly black school, weren't they?

A. Yes, I think so.

Q. Now, you also mentioned on Wednesday the two optional areas between Residence Park and Jane Addams, did you not?

A. That's correct.

Q. And those two optional areas still exist today, do they not?

A. Yes, I believe so.

Q. The reason for those options is a specific problem of difficult access, isn't it, or do you know?

A. I don't believe I have any indication of exactly why they were established.

Q. Have you made any investigation to find out for yourself why they were established?

A. The same sort of investigation I have told you already.

Q. Through the exhibits?

A. Yes.

Q. The interesting thing that you found in going through the exhibits on these two optional zones was that the shift of populations between the two school attendance zones had changed the compositions of the schools while the option had remained the same, is that right?

A. I think what you are saying is accurate, as I understand it. In '51 Residence Park was all white, Addams was 29.3 percent black, and then in the second option, which was established in 1960, Adams was 41.6 percent black while Residence Park was 80 percent black.

Q. All right. So that this is a situation where the optional zones have remained the same for ten to twenty years and they represent now a choice between two predominantly black schools, is that correct?

A. They didn't in 1963.

Let's say they didn't in '60, when the second option was established, because at that point there was a considerable difference in racial composition between Addams and Residence Park.

Q. Well, at one point in time one school was blacker than the other and at another point the other school was blacker than the other, isn't that true?

A. Which is precisely why the optional zones may have been set up.

Q. When you say may have been set up, you have absolutely nothing factual to support that kind of a comment, do you, Dr. Foster?

A. We have no data of the pupil movement between those two optional zones, that's correct.

Q. Nor do you know the population in those two optional zones?

A. Only what we can judge from looking at the census underlays.

Q. Nor have you made any effort to find out what it takes for a person living in either of those optional zones to physically get their body to Jane Addams Elementary School or to Residence Park Elementary School?

A. I think I testified earlier that I see no reason why an optional zone has to be set up because of this criterion, that if there is difficulty in a person having excess to a particular school, then why not draw the fixed line so that he can have access to the school that is more convenient, as the law says.

Q. Now, another one that you testified about on Wednesday was the Edison-Jefferson option, which is again one of these Wolfe Creek options in the same area as the Colonel White-Roosevelt, isn't it? Isn't Edison-Jefferson up here?

A. Yes.

Q. All right. So without going through all of those facts again, is it not true that by 1967 Jefferson was 50.5 percent black and Edison 95.9 percent black?

A. Which year was that, sir?

Q. 1967.

A. All right. But I think I included that in the group of options that were established at the same time as the west side movement all took place and included that in my analysis of that total area.

Q. By 1969 Jefferson was up to 80.3 percent black, wasn't it?

A. By 1969?

Q. Yes.

A. That's correct.

Q. Do you have any data on the students living in that optional area at any given time?

A. I don't believe we do, no, sir.

Q. Then you mentioned –

A. You mean in terms of movement from one school to the other?

Q. Right.

A. No, I don't believe we do.

Q. Then you mentioned the Emerson-Irving option, which was set up, was it not, in 1965 when the old Central High School was closed?

Here we have Emerson and to the west Irving.

A. I believe that's accurate.

Q. And the Central School District at the time it closed, at least in this part of it, contained almost no students, did it?

A. I don't know the exact figure, but I think it was a very minor number.

Q. In fact, this optional area was cleaned out by the Interchange at Route 35 and by the Interstate and by the taking for the rest of the land for the building of Sinclair College in that period of time?

A. That's to the best of my knowledge, yes.

Q. So at that time that was created, there were almost no students there, and at the present time there are no families living there, isn't that right?

A. I would believe so.

Q. Now, let's go to another one of these optional areas that you found significant.

A. Not necessarily.

Q. Belle Haven and Fort McKinley was an optional area that you listed in your testimony last Wednesday.

As I understood your testimony, you indicated that that was established in 1972?

A. That's the note I have on my sheet, yes.

Q. Where did you get that information?

A. Well, I don't have the source, but where I don't list in my other ones the source is PX– Plaintiffs' Exhibit 123 of the Board minutes.

Q. This is the optional area you are referring to, are you not, up in the corner of Fort McKinley, between Fort McKinley and Belle Haven School?

A. I beg your pardon a second.

I did state earlier, I think, on two occasions that I either got these from PX-123 Board minutes or from the maps themselves, and it may have been that I got this simply from a map in my analysis and found a disparity in the racial composition of the two attendance zones.

I'm not certain frankly from which source I got it.

Q. All right. Well, if you got it from the maps, and we look at the 1965 elementary school maps that were drawn by the Plaintiffs for this case, I don't know if you can see it from there, but it shows the same optional zone, doesn't it, in 1965?

A. I believe so. That's correct.

Q. And in fact that optional zone was set up when Belle Haven School was built back in 1954 and 1955, wasn't it?

A. Well, apparently what I have is inaccurate, so if you state that, I would assume that's correct.

What year did you say, sir?

Q. The Belle Haven School was built in 1954, wasn't it?

A. That's my information, yes, sir.

Q. All right. So I have flipped up this map that we have on the board to look at the elementary '57 zone, and it shows the same optional area, does it not?

A. Yes.

Q. Have you made any study of the access for students from that area, between Belle Haven and Fort McKinley Schools?

A. Not specifically, no, sir.

Q. Neither of those schools had any black students in them for 1967, did they?

A. It's entirely possible that that is accurate.

Q. Well, check me out on it.

A. I will.

Before what date did you say?

Q. 1967.

A. Belle Haven in 1967 is listed at 0.3 percent black, so that sounds reasonable. And Fort McKinley in 1967 is still no black.

Q. All right. Now that leaves me with only three optional areas from your testimony of last Wednesday, and that's the three optional areas that were created in the early fifties in connection with the shrinking of the Garfield, Willard, Wogaman boundaries; isn't that right?

A. I am not sure I know what you mean when you say that leaves you with only three.

Q. Well, I am trying to touch upon each of the optional zones that you covered in your testimony with us last Wednesday, but I want to make sure that I don't miss any.

A. Well, I haven't been checking them off as you went along, so your accuracy would be moreso than on mine on that.

Q. Well, I think I am left with just three. Before I turn to them, though, let me spend a couple of minutes with you on the closing of Willard and Garfield that took place in 1962. Now, with the closing of Willard and Garfield, the

students were reassigned in large part to MacFarlane which had been the old Dunbar High School which was just two blocks west of Garfield School and just four blocks north of Willard School; isn't that right?

A. I believe that's accurate, yes.

Q. Now, some students were assigned to Miami Chapel School which bordered the district on the south and some were assigned to Irving School District which bordered the old district on the east; isn't that true?

A. I believe that is correct.

Q. No problems of access for those children for any of those schools; isn't that right?

A. I wouldn't know specifically about that, but if you say so.

Q. All right. That's what I do say if you are willing to accept it.

Now, you indicated in your testimony that the Board could have reassigned these students to Patterson, Hawthorne, or Longfellow School, and then you made a few corrections of the distance factors in your testimony this morning.

A. That's correct. I think I said those would be illustrative of places where they could have assigned them.

Q. All right. To get to the Longfellow School which is located out on Salem Avenue, is it not?

A. Yes.

Q. The students would have to cross Third Street which is a busy east-west thoroughfare, would they not?

A. These are black students and they have amazing ability to get around, sir.

Q. All right. They would have to cross the Grace Green District, would they not, or the Edison District?

A. I believe the Edison District, not the Greene District.

Q. Where are the bridges they would get across Wolfe Creek?

A. I am not sure of your question. You mean they would have to go at some point through the Greene area to get to Longfellow?

Q. Either through the Grace Greene area or through the Edison area.

A. To get across the creek; is that what you are asking?

Q. Yes.

A. I believe that would be correct.

Q. And they would then have to cross Wolfe Creek and half of the Longfellow District to get up to Longfellow School, wouldn't they?

A. Yes.

Q. Longfellow School is now 64.1 percent black, isn't it?

A. In 1972?

Q. Yes.

A. 64.1.

Q. Now, Hawthorne was another school that you mentioned as a possibility. Again, like Longfellow, it is not contiguous to the old school district, is it?

A. No, it isn't.

Q. And in order to get to it, you would have to travel the same path that you and I have just described and continue on across Interstate 75 which I understand would represent no problem to people of agility and go on up to Hawthorne which is located in north Dayton?

A. Well, that's true except I might suggest that as was done in the other part of the west end business, you could shift zone lines so that you move the southern zone lines up and then the northern zone lines up and then you wouldn't have necessarily a noncontiguous situation at that point.

Q. Well, you are referring to the Stivers change?

A. No. I am referring to the total west end situation. All I am saying is that in order to assign these children to Longfellow or Hawthorne, you don't necessarily have to establish noncontiguous attendance areas where they would be jumping over.

Q. You can run a dog-leg or something like that?

A. What you simply do is what was done in the west end which is shift the southern and northern boundaries of the schools we are talking about.

Q. While we are on the subject of trying to get people from down here in what is the MacFarlane area up to Hawthorne and Longfellow, unlike the situation of going across Fifth Street to get over to Stivers, there is no public transportation between those two areas, is there?

A. I am not certain about that.

Q. And while we on the public transportation of Dayton, we talked a little bit about the gas bus on Philadelphia Drive that went up Fairview and the electric bus on Salem Avenue and, in fact, to get from the Colonel White optional areas down to Roosevelt as opposed to walking, you would have to take the Salem Avenue bus to downtown Dayton and transfer onto the Third Street bus and then come back out west across the river out Third Street to Roosevelt, wouldn't you, in all these periods?

A. I am obviously not certain, but I believe I remember reading something to that effect.

Q. All right. Now, the other school that you talked about in connection with the closing of Garfield and Willard was Patterson Elementary School which is over in the southeastern part of the city, isn't it?

A. Generally, yes.

Q. Located on Wyoming Street?

A. Well, I am not certain, but if you say so.

Q. All right.

A. I can step to the map and verify it if you like.

Q. All right, if you would like to, fine.

A. Yes, that is correct.

Q. Now, in order to get over to that school from the area that is under consideration, a school child would have to get across the Miami River either up at Third Street or at another crossing, go to downtown Dayton, transfer onto a southbound bus on Main Street, go out to the Fairgrounds at Miami Valley Hospital and then walk east on Wyoming until they got to the school, wouldn't they?

A. Well, I am not certain of all that. I think an alternate

way, if transportation was necessary, the Board could provide transportation with a school bus.

Q. All right. In order to really make any of these proposals that you are talking about back in 1952 effective, it would have been necessary for the Board to provide transportation; isn't that so?

A. I don't think so in all cases, no.

Another possibility which I didn't include in my three examples would have been Whittier which seems to be pretty close in to MacFarlane. Emerson, of course, is about the same shape as Patterson in terms of distance and accessibility, but basically, I think in almost all desegregation cases and certainly in this one natural barriers form a back seat in terms of considerations of assignment. They do have to be considered and obviously you don't send people across them just for the sake of doing it, but there are other factors to be considered besides access, and when I think you are weighing something like possible desegregation of schools, you sometimes have to bend your access criteria a little bit.

Q. Do I take it from your answer that you want to throw away the examples you gave us last week and give us some new examples of what possibilities that could have been done in 1962?

A. No. I am sticking with the ones I gave you. I said they are simply examples.

Q. Now, let's drop back another ten years and go to the last subject I want to examine you on, and that is the situation in 1952 with the shrinking of the Garfield, Willard, and Wogaman boundaries.

A. All right.

Q. As I understand it, you found that to be perhaps the most significant of the various things that you discussed with us.

A. Well, it was certainly significant in my opinion, yes.

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[R. I. 1663-1674, Vol. 17] Q. Plan A was simply to add on to the existing schools to service the growing number of students; isn't that right?

A. Well, yes, that is correct basically.

Q. And we will have to look at Plaintiffs' Exhibit 47A which is the elementary schools of '57 to locate Garfield and Willard, won't we, since those schools were discontinued in '62?

A. Yes.

Q. Both Garfield and Willard according to all the information we have had entirely black student populations back in 1952, didn't they?

A. The schools, yes.

Q. And, of course, simply adding onto those existing schools would have further impacted all black student bodies in those two school districts, wouldn't it?

A. I should think so, yes.

Q. The Board elected not to follow Plan A in December of 1952, didn't they?

A. Yes.

Q. As an alternative, they adopted what they described as Plan B, and if I understand that plan correctly, the all black Wogaman District was shrunk by additions to Jackson to the north and to Weaver to the north and east.

A. That is correct.

Q. At that time, Jackson was 35.9 percent black, wasn't it?

A. 1951, yes.

Q. And Weaver was 67.6 percent black?

A. Yes.

Q. So the shrinking of the Wogaman boundaries would cause black students who had been in those boundaries, at least some of them, to experience interrelationships with white students in the Jackson and Weaver Schools?

A. Yes.

Q. Then, the all black Garfield School District was shrunk by additions to Edison to the north and to Irving to the southeast, was it not?

A. Yes.

Q. In both situations, we are talking about other districts that were contiguous and immediately adjacent, aren't we?

A. I believe so, yes.

BY MR. GREER:

Q. And in the 1951-52 school year, the Edison School District had a student body that was 43 percent black, didn't it?

A. That's correct.

Q. And the Irving School District had 46.6 percent black?

A. Those are the figures I have, yes.

Q. So, the effect of shrinking the all black Garfield District was to permit black students in that district to experience interracial experiences with white students in the mixed schools of Edison and Irving?

A. That's correct.

Q. Now, as part of the shrinking of these school boundaries, in December of 1952, three triangular optional stones were created, isn't that right?

A. I think six were created altogether at that time.

Q. I'm talking about in this particular area of Garfield, Willard and Miami Chapel to the south, which was a relatively new school.

A. Well, which would those be?

Q. Well, let me run through them with you.

There was a triangle of urban —

A. I wonder if I might step to the map?

Q. Sure. That might be much easier. Why don't I give you the pointer and I'll get back to the platform.

Let's start from the north.

There was a triangle of Irving that was made optional to Willard, isn't that right?

A. Correct.

Q. And that would mean that the students in that area could continue at Irving or go to Willard, which was an all black school?

A. That's correct.

Q. And then just south of that a triangle of Willard was made optional to Whittier, isn't that right?

A. A triangle of Willard optional to Whittier?

Actually, this is the '70 census data. I think it would help me at least if we had the '50 census data under here. I wonder if we could do that.

Q. If you want to do it, that's fine, but I'm simply asking you about the attendance boundaries here.

Where is the '50 census data? Why don't you put it up?

A. All right, sir.

Q. Does that help you visualize the three optional zones that I'm talking about?

A. It helps me get a little better perspective of what is underneath them, yes, sir.

Q. Now, the second one was a triangle of Willard that was made optional to Whittier, isn't that right?

A. That's correct.

Q. And in '51-52 Whittier was 29.9 percent black in its student population, wasn't it?

A. Correct.

Q. And that optional zone made it possible for students in the all black Willard area to go to a mixed school, that school being Whittier?

THE COURT: Willard at this time was a hundred percent black, is that correct?

MR. GREER: That is correct.

BY MR. GREER:

Q. Is it not, Dr. Foster?

A. Well, the school was. Presumably any whites who were in the Willard attendance zone would also be able to go to Whittier.

I don't think there is any indication that the attendance area itself had only blacks in it.

Q. Well, you don't have any idea whether any of these three optional zones were all black, all white, or mixed, do you?

There isn't any information on that point?

A. No. But I think I testified that transfers were in effect up until 1951, and then the optional zones were created shortly after that, and there has been some testimony and so forth in the case that there were whites in Wogaman and in Willard and Garfield, and the census map of '50, in that, Willard and Garfield are both not in the red yet but in pink. So I think that this is a matter that isn't clear one way or the other.

Q. All right. Any transfer policies were stopped in 1951, isn't that right?

A. I believe that's right, yes, sir.

Q. And what are the 1951-52 figures for Garfield and Willard?

A. Schools were a hundred percent black.

Q. All right. Now, if we go down to the third optional area in this row, it is a triangle of all black Miami Chapel that was made optional to 29.9 percent black Whittier, isn't it?

A. That is correct.

Q. Now, Miami Chapel actually didn't come into being until '53, did it?

A. That's right.

Q. So that would be part of Wogaman back before the building of Miami Chapel?

A. That's correct.

Q. And according to the 1951-52 school years, Wogaman was all black, wasn't it?

A. The school, yes, sir.

Q. Thus this optional area would permit students in the all black Wogaman, or Miami Chapel School District, to attend the mixed school at Whittier?

A. Yes, but when you say that, you are inferring that the students in the optional zone would be all black, and I don't think there's any reason to believe that at all, because the '50 map shows the area to be green, and on the contrary, I would expect some of them to be white.

Q. Well, but you don't know either, do you?

A. I think I said that.

Q. We are both in the dark as to knowing whether the students in those optional zones were 100 percent black or a mixture of races, isn't that right?

A. That's correct.

Q. So let's look at some other facts concerning those three optional zones. They are all in a row, aren't they?

A. Yes.

Q. On a diagonal?

A. That's correct.

Q. The main branch of the B and O Railroad comes into Dayton along there, doesn't it?

A. Yes.

Q. And also the main branch of the Pennsylvania Railroad comes through Dayton on the other side of the river, comes into that same area, doesn't it?

A. I can't find it on the small map.

Q. Let's go to the big map. Maybe I can help you.

If we go to the west bank of the Miami River, you can see on the map the main branch of the Baltimore and Ohio paralleling the west bank of the river and then going up through this area where the three optional zones are, can you not?

A. That's right.

Q. And then if we look at the east side of the Miami River, you can see the Pennsylvania Railroad tracks going up to the river past a large switching yard at Frigidaire and crossing the river into this same area, those three optional zones, can you not?

A. Well, they aren't on the optional zones as the B and O is. That's why I couldn't find them on the other map. They are to the east of the line you described.

Q. Do you want to look underneath the overlay on the other map to find out just where the Pennsylvania tracks are in that area?

A. Well, if I surmize correctly, coming from the direction

of the south center part of the map and going north, this would be the tracks to which you are referring, right?

Q. Yes.

A. All right. Once they reach the school zones or school lines, they continue to go in a northeasterly direction.

So as I read the map, the tracks would all be to the east of the optional zones, which we are talking about and which do fall on the B and O line.

Q. All right. Now, the main branch of the B & O provides one side of the triangle in each of those three optional zones, doesn't it?

A. I think that is correct.

Q. And then there is a side branch of the B & O that swings off to the west to form another side of the triangle in the central of those three optional zones?

A. You have lost me on that. Perhaps we can go back to the big map.

Q. All right. This is the side track of the B & O that branches off to the northwest there and then crosses Wolfe Creek to go along the northern edge of Wolfe Creek, doesn't it?

A. And how did you describe that in relation to the zones?

Q. Isn't that part of the Whittier-Willard optional zone, the middle of the two zones?

A. Would it be the northern boundary of the middle optional zone?

Q. I believe that is correct.

A. It is a little confusing, but I think that seems accurate.

Q. Have you checked the boundary descriptions for these optional zones in your review of this material in preparation for testifying?

A. Not all of them, no sir, not these I did not. I did the high school ones.

Q. Before you testified, were you aware that these three optional zones were related to the railroad tracks that go through Dayton and that area?

A. I was not, no, sir.

Q. Railroad tracks present a safety factor that would have to be considered in the drawing of attendance lines, do they not?

A. In the drawing of attendance lines, yes, sir.

Q. All right. I think you can go back to the stand.

(Witness returns to stand.)

BY MR. GREER:

Q. Now, the shrinkage of boundaries in the Garfield, Willard, Wogaman area which were made two years before 1954 were purposely made according to all the records that we have by the Dayton Board of Education in an attempt to reduce the racial concentration of minority groups in those three schools; isn't that true?

A. I think that's their allegation, yes.

Q. Now, with the advantage of hindsight here in 1972, we can see that their efforts were doomed to frustration, can we not?

A. Well, failure would be a better word perhaps.

[R. I. 1679, Vol. 18] THE WITNESS: Well, I think you do what you can in a situation like this, and I think we suggested some of those things of making different choices in terms of boundaries and in terms of additions, and I think the Board took the worst possible move that it could in this whole west side situation and, in fact, hastened the impaction of this area and made it quite clear to all concerned that this is where it was headed, but basically I think I would agree with what has been said that as it does work out in fact in some cases, this may be simply a delaying tactic, and I don't think that anybody knows that when you are doing it. You can guess and make predictions.

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[R. I. 1683-1687, Vol. 17] Q. Dr. Foster, did you testify, and I understand that you did testify, that in your opinion what was done in the west side determined or communicated what was intended to happen in that area? Was that your testimony?

A. I believe it was, yes, sir.

Q. Dr. Foster, let us assume that instead of making the changes that were indicated, for example, carving out – I believe this Miami Chapel-Whittier option was carved out exactly from the Wogaman zone, that portion in Greene, is that correct?

A. I believe that's what we testified to, yes, sir.

Q. Instead of doing things like that, Dr. Foster, if they had taken white children from many of these areas and assigned them to Wogaman instead of leaving a cored area of black schools, if they had assigned 60 percent of the enrollment as white students to Wogaman and 60 percent of Willard's enrollment is white, and 60 percent of Garfield is white, and then taken the black students from those schools, whether they shrunk the boundaries or adjusted them in other manners, and assigned them to other schools in this area, would that have changed the perception of what was intended to happen in there?

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A. Well, I think this is the crux of what I have been trying to say. So far as I know, this characterized the duality of the date and system in that in my analysis I remember no place where white students to any degree were in fact assigned to black schools, and at the point that a system begins to do that, then I think they are serious about desegregation.

BY MR. LUCAS:

Q. Would that in your opinion have any effect on the stability, in terms of the change in the area? Assume an assignment of a substantial number of whites to those schools.

A. Well, to the extent that school patterns and residential action interreacts, I think it would, yes.

Q. The Court also inquired, Dr. Foster, about the question of other remedies.

What effect, if any, does school construction, selection of alternate locations for schools, and school additions have on the racial composition of the schools?

A. Well, I think I've testified that in my opinion the building additions that were used in Dayton by and large in a sense took the place of changing zone lines in terms of maintaining existing racial patterns and compacting them.

Q. Are you familiar, Dr. Foster, with the Nashville plan, where the court forbade the construction of any additions to the outlying white schools which were not desegregated under the plan?

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A. Yes, I am familiar with the Nashville plan.

BY MR. LUCAS:

Q. And what effect would such policy of restricting construction of predominantly white schools have in the context of a system-wide desegregation plan?

A. Well, it essentially makes it more difficult for whites to take advantage of spaces available in the suburban areas.

Q. Now, Dr. Foster, in terms of the cross examination about the criterion, the what you call common perceptions of the neighborhood school, you testified that the walk-in school was one of the perceptions, is that correct?

A. That's correct.

Q. In the State of Ohio, and I believe your testimony was this, that between 40 and 50 percent of all children ride to school on a school bus.

Does that indicate a neghborhood pattern of attendance in the state, or what does it indicate?

THE COURT: Mr. Lucas, that question really is quite deceptive.

Would you restate that in terms of the percentage that are bussed in metropolitan areas?

I'm a native of Ohio. I'm quite familiar with the extensive bussing that goes on in rural areas.

Dr. Foster observed at one point of the consolidation procedure that this is well known in the State of Ohio, but that figure standing alone really has no meaning.

It had no meaning when Mr. Greer mentioned it. But I would be interested to know of similar information in metropolitan areas.

Do you know, Dr. Foster?
THE WITNESS: I'm afraid I don't.

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[R. I. 1696-1700, Vol. 17] Q. Between what peaks? Do you know what the top and bottom was? Do you know what the maximum was?

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A. The top, I believe, was 55 percent black and the bottom was around 27 percent black.
By Mr. Lucas:
Q. Dr. Foster, you were examined at some length about facilities identifying schools.
A. Very definitely.
MR. LUCAS: I would like to make reference to Page 1383 et seq. of the transcript.
By Mr. Lucas:
Q. Now, turning to the construction of the Roth High School, Dr. Foster, I believe in direct examination you were asked your opinion of the effect of the construction of Roth on Roosevelt High School; is that correct?
A. I believe that's correct, yes, sir.
Q. And your testimony was that it took the whites out of Roosevelt, and do you know what else was done approximately the same time in terms of school construction at the high school level in Dayton?
A. Well, Roth was up in 1959 and then I think something that would affect this situation would be the opening in 1960 of Meadowdale with the eventual capacity of 2980 children including north of Roth, in the northwest section of the district.
Q. I believe that was built in 1960 with 48 classrooms?
A. And an addition of 39 in 1967, yes.
Q. Dr. Foster, Mr. Greer discussed with you possible alternatives to the building of Roth and to the placement of Roth attendance boundaries. What opportunities in your

opinion were present with the construction of that much additional high school capacity within the two-year period?
A. Well, I am not sure I understand your question, but I think I do and that is that if you would have taken the construction of Roth and Meadowdale together, it is conceivable that a site somewhere in between the two could have been utilized, and if this had been done, it seems to me the open invitation to whites for a white high school in Meadowdale would have been lessened considerably and it would have lessened the opportunity for movement of whites to that area in terms of schooling.
THE COURT: Mr. Lucas, may I interrupt for just a moment.
Dr. Foster, how do you view the responsibility of a school board when a real estate developer determines to build a large construction project of, let's say, 800 or 900 homes? Is it your opinion that the school board has an obligation to refrain from building schools there in order to discourage him because it may be totally a white development?
THE WITNESS: Well, I think at this time certainly it does, because I think the total problem that you are speaking of has certainly racial implications.
THE COURT: In other words, you are suggesting that a school board in effect has a veto power over private development of tracts?
THE WITNESS: Well, I am not exactly sure I would put it that way, but I certainly think they have a right to say where they are going to put schools, not only a right, but a duty.
THE COURT: They do not in your opinion to place the schools where there are such developments?
THE WITNESS: I think that's my opinion, yes.
THE COURT: Thank you.
THE WITNESS: If they can do it, other factors being equal, including the racial situation, why, who would argue, but there are other factors besides site convenience.
THE COURT: You may proceed, Mr. Lucas.

By Mr. Lucas.

Q. Dr. Foster, in your opinion, should a school board locate schools before development or for anticipated development when they have space available in other schools in the system to which the students could be assigned?

A. Well, again it is hard to answer that in the abstract, but other factors being equal, certainly I would use the schools that are available, and I think ones that do have capacity rather than new structures, and one of the difficulties with Meadowdale and Roth, it seems to me, is neither one of them have been filled to capacity for the past several years as I read the figures by quite a bit.

Q. In that context, Dr. Foster, building the schools where the children are and making schools convenient, are those terms in your experience and in your opinion subject to such other duties as the Board may have?

A. Yes, of course.

Q. And that would include whether or not they already had space and it was not being used; is that true?

A. That's correct. It seems to me there are two very important factors that are operative now and have been all along, and they are economy and what we do with our money in terms of school buildings because they are very expensive, and I think the other one obviously is the constitutional problem of desegregation.

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Q. You said constitutional. Do you think segregation or desegregation of schools is also an educational responsibility of school boards?

A. Of course, I do.

Q. Now, Mr. Greer asked you about an optional attendance area in the cemetery. Dr. Foster, do you know where the information as to optional attendance areas came from?

A. I think I have said as far as I am concerned it came from two places. One is Plaintiffs' Exhibit 123 which was board minutes, and the other was from the maps which Mr. Lamson prepared.